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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 30

EDWARD R. FIELDS, ET AL., APPELLANTS,

vs.

CITY OF FAIRFIELD.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

FILED OCTOBER 31, 1962

PROBABLE JURISDICTION NOTED MARCH 18, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 566

EDWARD R. FIELDS, ET AL., APPELLANTS,

vs.

CITY OF FAIRFIELD.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

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[fol. 1]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

THE CITY OF FAIRFIELD, a Municipal Corporation, Plaintiff,

v.

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, Defendants.

ORGANIZATION OF THE COURT

At a regular term of the Circuit Court of Jefferson County, Alabama Bessemer Division, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings among others were had and done in a case styled:

The City of Fairfield, a Municipal Corporation, Plaintiff vs. Dr. Edward R. Fields and National States Rights Party, Defendants.

[fol. 2]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

COMPLAINT—Filed October 11, 1961

To the Honorable Judges of Said Court in Equity Sitting:

Comes the Complainant in the Above Styled Cause and Would Show Unto the Court the Following Facts as a Basis for the Relief Hereinafter Prayed:

1. Your complainant is a duly organized and incorporated municipality in the State of Alabama, located in Jefferson County, Alabama.

2. That the respondent, Dr. Edward R. Fields, is a resident of Jefferson County, Alabama, residing at 1509 Mims Street, S.W., Birmingham, Alabama, and is over twenty-one years of age. The respondent, National States Rights

Party, is a corporation, or unincorporated association, with its home office in Birmingham, Alabama.

3. The respondents, Dr. Edward R. Fields and National States Rights Party have called a public meeting at 5329 Valley Road, Fairfield, Alabama, for Wednesday, October 11, 1961. They have announced said meeting by distributing hand bills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield, Alabama, a copy of which hand bill is attached hereto and made a part hereof the same as if included herein. The purpose of said meeting as manifested by the attached hand bill is to create tension, ill will, disturbances, and disorderly conduct between the races in the City of Fairfield, Alabama.

4. The respondents have caused said hand bills to be distributed upon the streets of the City of Fairfield, Alabama, and placed in automobiles in the City of Fairfield, Alabama, in violation of and in utter disregard of sections 3-4 and 3-5 of the General City Code of the City of Fairfield, Alabama.

5. The respondents have announced said meeting without having obtained a permit from the Mayor of the City of Fairfield, Alabama, and the respondent, Dr. Edward R. Fields, has informed the Mayor of the City of Fairfield that he will hold said meeting whether a permit is issued or not. Section 14-53 of the General City Code of the City of Fairfield, Alabama provides, "It shall be unlawful for any [fol. 3] person or persons to hold a public meeting in the city of police jurisdiction without first having obtained a permit from the mayor, to do so".

6. Said meeting will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and the inhabitants thereof. It is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield, Alabama.

Wherefore, Premises Considered, Complainant prays that the Court take jurisdiction of this bill of complaint, and that Dr. Edward R. Fields and National States Rights Party be made parties respondent to this Bill of Com-

plaint and that process issue requiring them to plead, answer, and demur within the time required by law or suffer decree pro confesso herein, and that a temporary writ of injunction or restraining order be immediately issued by this Court directed to the respondents, their servants, agents, or employees, enjoining and restraining it and them from holding said meeting at said time and place, and from distributing said hand bills in the City of Fairfield, Alabama, and that on a final hearing of this cause that the temporary writ of injunction or restraining order be made final and that a permanent injunction order be made enjoining the respondents, Dr. Edward R. Fields and National States Rights Party, their servants, agents, or employees from holding such meeting in the City of Fairfield, Alabama, and from distributing such hand bills in the City of Fairfield, Alabama and complainant prays for such other and further relief, both general and special to which in equity it may be entitled.

Frank B. Parsons, Attorney for Complainant.

[fol. 4]

ATTACHMENT TO COMPLAINT

(COPY OF HAND BILL)

WHITE WORKERS
MEETING

*NIGGERS ARE TAKING OVER UNIONS!

*NIGGERS WANT OUR PARKS AND POOLS!

*NIGGERS DEMAND MIXED SCHOOLS!

Communists in NAACP and in WASHINGTON say Whites HAVE NO RIGHTS!

The Nigger gets everything he DEMANDS!

WHITE SUPREMACY CAN be saved

Whites CAN STOP this second Reconstruction!

HEAR IMPORTANT SPEAKERS FROM 4 STATES

TIME—8 P.M. DATE—WED. OCT. 11

PLACE—5329 VALLEY ROAD

IN DOWNTOWN FAIRFIELD, ALABAMA
Above the Car Wash

THUNDERBOLT Mobile Unit will Be Parked Out Front

Sponsored by National States Rights Party

Box 733, Birmingham, Alabama

PUBLIC INVITED

COME AND BRING YOUR FRIENDS!

Duly sworn to by C. J. Smithson, jurat omitted in printing.

[fol. 5]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

FIAT ORDERING ISSUANCE OF TEMPORARY INJUNCTION—October 11, 1961

This cause being submitted to the Court upon application of the complainant for temporary writ of injunction as prayed for in the original bill herein, and upon consideration thereof the Court being of the opinion that the same should be granted:

It Is, Therefore, Ordered, Adjudged, and Decreed by the Court that upon the Complainant entering into good and sufficient bond, conditioned as provided by law, in the sum of One Hundred and 00/100 ($100.00) Dollars, same to be approved by the Register of this Court, that the Register issue a temporary writ of injunction as prayed for in the original bill in this cause,

It Is Further Ordered, Adjudged, and Decreed by the Court that a final hearing will be held on the application

for permanent injunction in the Circuit Courtroom of E. L. Ball, Circuit Judge at the Bessemer Courthouse, Jefferson County, Alabama, on the 17th day of November, 1961, at 9:00 A.M.

Done and ordered, this the 11th day of October, 1961.

E. L. Ball, Circuit Judge, in Equity Sitting.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

WRIT OF INJUNCTION—Filed October 11, 1961

To Any Sheriff of the State of Alabama—Greetings:

We Command You, that without delay you execute this Writ, and make due return how you have executed the same, according to law.

Elmore McAdory, Register.

To: Dr. Edward R. Fields, and the National States Rights Party, their servants, agents, and employees:

Whereas, the City of Fairfield, a municipal corporation, has this day filed its Bill of Complaint in this said Circuit Court against Dr. Edward R. Fields, and National States Rights Party, their servants, agents, and employees, praying among other things that they be restrained and enjoined from holding a public meeting at 8 P.M. on Wednesday, October 11, 1961. at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the [fol. 6] City of Fairfield, on October 10, 1961.

And Whereas, on said bill being exhibited to the Honorable Edward L. Ball, one of the Judges of the Circuit Court of Jefferson County, Bessemer Division, Alabama, on the 11th day of October, 1961, he did order, that upon complainant's entering into bond in the sum of $100.00 (One Hundred and no/100) dollars, and approved by the Register of this Court, payable and conditioned according to law, a writ of injunction issue out of this Court, according to the prayer of said bill;

And Whereas, bond has been given and approved as required by said order, these, therefore, are to command and strictly enjoin you from holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961, until further orders from this Court; and this you will in no wise omit under penalty, etc.

Witness, Elmore McAdory, Register, Circuit Court, Bessemer Division Jefferson County, Alabama, this the 11th day of October, 1961.

Elmore McAdory, Circuit Clerk & Register, Bessemer Division, Circuit Court, Jefferson County, Alabama.

Issued this 11th day of October, 1961.

[fol. 7]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

SUMMONS—October 11, 1961

To Any Sheriff of the State of Alabama, Greeting:

We command you that you summon Dr. Edward R. Fields, and National States Rights Party of Jefferson County to be and appear before the Judge of the Circuit Court, Bessemer Division, exercising Chancery jurisdiction, within thirty days after the service of this summons, and then and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by City of Fairfield, a Mun. Corp. against said Dr. Edward R. Fields, and National States Rights Party and to further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ, with your endorsement thereon, to our said Court immediately upon the execution thereof.

Witness, Elmore McAdory, Register of said Circuit Court, Bessemer Division, at office in Bessemer, this 11th day of October, 1961.

Elmore McAdory, Deputy Clerk and Register.

Executed this 11th day of October, 1961 by leaving a copy of bill and summons with Writ of Injunction with Dr. Edward R. Fields and Dr. Edward R. Fields as agent for National States Rights Party.

Holt A. McDowell, Sheriff, by Clyde Morris, Deputy Sheriff.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

BOND—Filed and Approved October 11, 1961

Know All Men by These Presents:

That we, The City of Fairfield, a municipal Corporation, are held and firmly bound unto Dr. Edward R. Fields and National States Rights Party in the sum of One Hundred and no/100 ($100.00) Dollars for the payment of which we bind ourselves, our heirs, assigns, executors or administrators, jointly and severally by these presents.

The Condition of this bond is this: That whereas, the above bounden City of Fairfield, a municipal corporation, in a bill filed by it against said Dr. Edward R. Fields, and National States Rights Party, prayed for and obtained a [fol. 8] Writ of Injunction out of the Circuit Court of said County upon the approval of this bond, restraining and enjoining the said Dr. Edward R. Fields, and National States Rights Party, their servants, agents, or employees from holding a public meeting at 8 P. M. on Wednesday, October 11, 1961 at 5329 Valley Road, Fairfield, Alabama, and from distributing further in the City of Fairfield handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961.

Now, if, on the dissolution of such injunction, the said city of Fairfield, a municipal corporation shall pay the

amount of the judgment enjoined, with interest, and also such damages and costs as may be decreed against it, then this bond shall be null and void; otherwise, to remain in full force and effect.

In witness whereof the City of Fairfield, a municipal corporation, has caused these presents to be executed by C. J. Smithson, its mayor, thereunto duly authorized this 11th day of October, 1961.

City of Fairfield, a municipal Corporation, by C. J. Smithson, Mayor.

Taken and approved this 11th day of October, 1961.

Elmore McAdory, Deputy Clerk & Register.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

JUDGMENT OF CONTEMPT—October 12, 1961

This matter now coming on to be heard before the Court on the question of the contempt of Dr. Edward R. Fields and Mr. Robert Ellsworth Lyons in distributing literature and holding a meeting or attempting to hold a meeting in violation of the terms of the temporary writ of injunction issued by this Court on October 11, 1961 and upon the testimony which has been taken orally before the Court; and upon the consideration of the same the Court is of the opinion that the said Dr. Edward R. Fields and Mr. Robert Ellsworth Lyons, knew the terms of said injunction and willfully and contemptuously distributed literature and held or attempted to hold said meeting, it is, therefore,

Ordered, Adjudged, and Decreed by the Court:

[fol. 9] 1. That said Dr. Edward R. Fields and Mr. Robert Ellsworth Lyons are in contempt of Court.

2. That as punishment for his said contempt each be confined in the jail of Jefferson County, Alabama, Bessemer Division, for a term of 5 days and that each be fined the sum of Fifty ($50.00) Dollars.

3. In the event of Certiorari or Appeal, bond is hereby set in the amount of Five Hundred Dollars ($500.00) for each said party.

Done this 12th day of October, 1961.

E. L. Ball, Circuit Judge.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

NOTICE OF APPEAL—Filed October 12, 1961

To the Circuit Court of Jefferson County, Bessemer Division:

Comes Now the respondents, Dr. Edward R. Fields and Robert Lyons, and hereby file notice that they will appeal the judgment of this Honorable Court to the Supreme Court.

J. B. Stoner, Attorney for Respondents.

J. B. Stoner, P. O. Box 48, Atlanta, Georgia, Phone 451-1496.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

APPEAL BOND TO SUPREME COURT—Filed and Approved October 13, 1961

Know All Men by These Presents, That we, Dr. Edward R. Fields, as principal, and D. Fred Short and Pearce S. Johnson, as sureties, are held and firmly bound unto the City of Fairfield for the use of City of Fairfield, in the sum of Five Hundred and 00/100 ($500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally and firmly by these presents.

[fol. 10] The right of exemption under the Constitution and laws of the State of Alabama is hereby waived.

Sealed with our seals and dated this the ..... day of ....., 1961.

Whereas, on the 12th day of October, 1961, the said above bounded Dr. Edward R. Fields was convicted in the Circuit Court of Jefferson County, Bessemer Division of the offense of Contempt of Court and was fined $50.00 and costs and 5 days imprisonment in County jail and whereas this day, the said Dr. Edward R. Fields as such Defendant has prayed for and obtained an appeal from said judgment of conviction to the Supreme Court of Alabama to be holden in and for said State.

Now, Therefore the condition of the foregoing obligation is such, that if the said Dr. Edward R. Fields shall prosecute said appeal to effect and satisfy such judgment or conviction both as to debt and costs, as said Supreme Court of Alabama may render in the premises and shall in the event said judgment or conviction is affirmed present himself before the Circuit Court of Jefferson County, Bessemer Division, for sentence within Fifteen days from said affirmance and pay all costs in this appeal, then the said obligations shall be null and void, otherwise to remain in full force and effect.

Dr. Edward R. Fields; D. Fred Short, 415 21st St., Ensley; Pearce S. Johnson, 2132 Maywood Dr., Ensley.

Taken and approved this the 18th day of October, 1961.

Elmore McAdory, Deputy Clerk.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

APPEAL BOND TO SUPREME COURT—Filed and Approved October 13, 1961

Know All Men by These Presents, That we, Robert Lyons as principal, and D. Fred Short and Pearce S. Johnson as sureties, are held and firmly bound unto the City of Fairfield, for the use of City of Fairfield, in the sum of

Five Hundred and 00/100 ($500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally and firmly by these presents.

[fol. 11] The right of exemption under the Constitution and laws of the State of Alabama is hereby waived.

Sealed with our seals and dated this the ..... day of ....., 1961.

Whereas, on the 12th day of October, 1961, the said above bounded Robert Lyons was convicted in the Circuit Court of Jefferson County, Bessemer Division of the offense of Contempt of Court and was fined $50.00 and costs and 5 days imprisonment in the County Jail and whereas this day, the said Robert Lyons as such Defendant has prayed for and obtained an appeal from said judgment of conviction to the Supreme Court of Alabama to be holden in and for said State.

Now, Therefore the condition of the foregoing obligation is such, that if the said Robert Lyons shall prosecute said appeal to effect and satisfy such judgment or conviction both as to debt and costs, as said Supreme Court of Alabama may render in the premises and shall in the event said judgment or conviction is affirmed present himself before the Circuit Court of Jefferson County, Bessemer Division, for sentence within Fifteen days from said affirmance and pay all costs in this appeal, then the said obligations shall be null and void, otherwise to remain in full force and effect.

Robert Lyons; D. Fred Short, 415 21st St., Ensley; Pearce S. Johnson, 2132 Maywood Dr., Ensley.

Taken and approved this the 13th day of October, 1961.

Elmore McAdory, Deputy Clerk.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

CITATION OF APPEAL—October 16, 1961

To City of Fairfield

or

Frank Parsons, Attorney of Record

Whereas Robert Lyons has taken an appeal from the judgment and sentence by the Circuit Court, Bessemer Division, for the County of Jefferson, State of Alabama, in the cause of City of Fairfield Against Dr. Edward R. Fields and National States Rights Party.

[fol. 12] Now, you are, therefore, cited to appear at the present term, 1961, of the Supreme Court of Alabama, to defend on said appeal if you shall think proper to do so.

Witness, this 16th day of October, 1961.

Elmore McAdory, Deputy Clerk.

Executed this 16th day of October, 1961 by serving a copy of the within notice on Frank Parsons, Attorney.

Holt A. McDowell, Sheriff, by Stamps and Brown, Deputy Sheriff.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

CITATION OF APPEAL—October 16, 1961

To City of Fairfield

or

Frank Parsons, Attorney of Record

Whereas Dr. Edward R. Fields has taken an appeal from the judgment and sentence by the Circuit Court, Bessemer Division, for the County of Jefferson, State of Alabama, in the cause of City of Fairfield Against Dr. Edward R. Fields and National States Rights Party.

Now, you are, therefore, cited to appear at the present term, 1961, of the Supreme Court of Alabama, to defend on said appeal if you shall think proper to do so.

Witness, this 16th day of October, 1961.

Elmore McAdory, Deputy Clerk.

Executed this 16th day of October, 1961, by serving a copy of the within notice on Frank Parsons, Attorney.

Holt A. McDowell, Sheriff, by Stamps and Brown, Deputy Sheriff.

[fol. 12a]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

6th Div. 801

I, Elmore McAdory, Deputy Clerk and Register of the Circuit Court of Jefferson County, Alabama, Bessemer Division, do hereby certify that in the cause of

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, Appellants

vs.

CITY OF FAIRFIELD, Appellee

which was tried and determined in this court on the 12th day of October, 1961, wherein a judgment and sentence was rendered in favor of the Appellee, wherein said Appellants prayed for and obtained an appeal to the Supreme Court of Alabama, for all costs of appeal, and that Robert Lyons, D. Fred Short and Pearce S. Johnson are sureties on said bond for all costs of appeal.

I further certify that on the 16th day of October, 1961, notice of said appeal was duly served on Frank Parsons, Attorney of Record for said Appellee.

Witness my hand and seal of office, this the 17th day of October, 1961.

Elmore McAdory, Deputy Clerk and Register, Circuit Court, Bessemer Division, Jefferson County, Alabama.

(Seal)

Filed, Oct. 18, 1961, Supreme Court of Alabama, J. Render Thomas, Clerk.

[fol. 12b]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

6th Div. 802

I, Elmore McAdory, Deputy Clerk and Register of the Circuit Court of Jefferson County, Alabama, Bessemer Division, do hereby certify that in the cause of

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, Appellants

vs.

CITY OF FAIRFIELD, Appellee

which was tried and determined in this court on the 12th day of October, 1961, wherein a judgment and sentence was rendered in favor of the Appellee, wherein said Appellants prayed for and obtained an appeal to the Supreme Court of Alabama, for all costs of appeal, and that Dr. Edward R. Fields, D. Fred Short and Pearce S. Johnson are sureties on said bond for all costs of appeal.

I further certify that on the 16th day of October, 1961, notice of said appeal was duly served on Frank Parsons, Attorney of Record for said Appellee.

Witness my hand and seal of office, this the 17th day of October, 1961.

Elmore McAdory, Deputy Clerk and Register, Circuit Court, Bessemer Division, Jefferson County, Alabama.

(Seal)

Filed, Oct. 18, 1961, Supreme Court of Alabama, J. Render Thomas, Clerk.

[fol. 13]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

No. 19249

In Equity

IN THE MATTER OF: CITY OF FAIRFIELD,
a Municipal Corporation, Complainant,

vs.

DR. EDWARD R. FIELDS, and NATIONAL STATES RIGHTS PARTY,
and MR. ROBERT LYONS, Respondents.

Transcript of Proceedings—October 12, 1961

at the hearing of the above-encaptioned cause before the Honorable Edward L. Ball, Judge of the said Court, on Thursday, October 12, 1961, commencing at about the hour of 2:00 P.M., the said date being one of the judicial days of the said Court, at Bessemer, Alabama, whereupon the following testimony was offered, evidence introduced and proceedings had, in due form of law:

APPEARANCES:

Harwood & Parsons, Fairfield, Alabama, By: Mr. Frank Parsons, For the Complainant;

Mr. J. B. Stoner, P O Box 48, Atlanta, Georgia, For the Respondents.

Official Reporter: Mr. Sydney S. Eckstone.

Whereupon, the following proceedings were had:

[fol. 14]

COLLOQUY

The Court: Are you gentlemen ready?

Mr. Parsons: Yes, your Honor.

Mr. Stoner: Yes, sir.

The Court: Does either side want the rule in this case?

Mr. Stoner: We don't want the rule, your Honor, please.

The Court: That is the rule to exclude the—

Mr. Stoner: Yes, sir.

The Court: —witnesses.

Mr. Stoner: Yes.

The Court: I don't know your practice in the other states.

Mr. Stoner: Yes, sir.

The Court: Mr. Parsons? Do you desire the rule, Mr. Parsons?

Mr. Parsons: No, sir.

The Court: All right, sir.

Will you bring Mayor Smithson up to represent the City? All right, sir.

Now, Mr. Parsons, do you care to make an opening statement for the City as to what you expect to prove, here?

Mr. Parsons: Yes, sir.

The Court: All right, sir.

OPENING STATEMENT BY MR. PARSONS

Mr. Parsons: If the Court please, we expect to show that— Well, of course, the Court is acquainted with the fact that it issued an injunction yesterday morning and the court is acquainted with the terms of that injunction, which, I am sure, is before the Court.

We expect to prove that approximately at seven-thirty or a quarter of eight last night, after the injunction was served—and I believe that the record will show that the injunction was served, that Dr. Fields and this other gentleman, Robert Ellsworth Lyons, came to the vicinity of the place where the meeting was scheduled and contacted the [fol. 15] people there. They contacted the people there

about the meeting and distributed literature. All in the defiance of the Court's order and in contempt of court.

Thank you.

The Court: Mr. Stoner?

RESPONSE BY MR. STONER

Mr. Stoner: Your Honor, the injunction was served upon the defendants. They did not violate it in any respect. The only purpose of their going to Fairfield was so as to tell people who had already been invited to come there to go over to the City Hall at—what's the name of that town?

Dr. Fields: Lipscomb.

Mr. Stoner: At Lipscomb. To the meeting there so as not to violate your order.

After your order was issued forbidding them to distribute any more handbills inviting people to the meeting, they did not distribute any more. The only thing that was distributed after that was the Thunderbolt here and that is not prohibited by your injunction.

And, so, the forbidden handbill was not distributed there and I think that the defendants should be complimented for respecting your order to the extent that they went over to Fairfield to prevent the meeting from taking place in accordance with your order so as to re-route those people over to Lipscomb City Hall or City Park, wherever it was supposed to be held, there, in Lipscomb, and to comply with your orders.

And I think it is outrageous for the City of Fairfield to come in and ask that two innocent white segregationists be put in contempt of court when they went out of their way to obey your order in the injunction.

Thank you, your Honor.

The Court: All right, sir.

Mr. Parsons, call your first witness, please.

Mr. Parsons: Officer Pope.

[fol. 16] CHESTER C. POPE having been called as a witness on behalf of the Complainant herein, and having been first duly sworn according to law, was thereupon examined and testified as follows:

Direct examination.

By Mr. Parsons:

Q. State your name, please, and address.

A. Chester C. Pope, 1620 Bryson Street, Midfield, Alabama.

Q. By whom are you employed and in what capacity?

A. I am a police officer for the City of Fairfield, Alabama.

Q. I see.

Were you on duty at Fairfield, last night, about seven-thirty or a quarter to eight?

A. Yes, sir.

Q. At that time, did you see the parties here, Edward R. Fields and Robert Ellsworth Lyons?

A. Yes, sir.

Q. Will you tell us what happened at that time?

A. Well, sir—

Q. Tell us where it was, in the first place. Will you, please?

A. Yes, sir.

It was in the 5300 Block of Valley Road.

Q. All right, sir.

Will you tell us what transpired?

A. I was across the street at McGregor's Car Wash and I noticed a commotion across the street and, of course, I immediately went over. And when I went over—when I got over there, Mr. Fields was distributing handbills or these circulars, Thunderbolts; whatever they are. And telling the people that the meeting was going to be at Lipscomb City Hall instead of there at Fairfield.

Q. I see.

He was contacting various people over there?

A. Yes, sir.

He was handing these Thunderbolts out and telling each person he handed it to that the—

Q. Was Robert Ellsworth Lyons there at that time?

[fol. 17] A. They brought him up after I—

Q. Well, you didn't see him doing it?

A. No, sir.

I arrested Mr. Fields and carried him over to the Paddy-Wagon, and Mr. Morris, Chief Morris started talking to him.

Q. I see.

And what was Mr. Fields telling the people there?

A. He was telling them that the meeting had been called off over there and would be at a different—at Lipscomb City Hall.

Q. Said it would be held—had been called off over there and would be held at Lipscomb City Hall?

A. Yes, sir.

Q. That was the extent of the conversation?

A. Yes.

Q. All right.

I believe you can answer this gentleman's questions.

A. Yes, sir.

Cross examination.

By Mr. Stoner:

Q. Was there any disturbance there that night that you saw while you were there? Did you see any kind of a disturbance there at Fairfield last night at the time that you arrested Dr. Fields?

A. No, sir. There was no—

Q. —Before that time? Or at that time?

A. No, sir.

Q. You didn't see him fighting with anybody?

A. No, sir.

Q. And there was no trouble at all?

A. No, sir.

Q. Very peaceful—

A. Yes, sir.

Q. —situation?

A. That's right.

Q. There?

A. Yes.

[fol. 18] Q. He wasn't attempting to hold any kind of a meeting there, was he?

A. No, sir.

He was just saying the meeting would be held in Midfield or Lipscomb—at Lipscomb City Hall.

Q. Is this the leaflet? This the leaflet you are talking about? That he was exhibiting? The Thunderbolt?

(demonstrating)

A. Yes, sir.

Q. Did you see him distribute any other leaflets other than this?

A. No, sir.

Q. And you told him that he gave them this and told them to go on over to Lipscomb?

That correct?

A. Yes, sir.

Mr. Stoner: Thank you, sir. That's all.

(Witness excused.)

Mr. Parsons: May I use this, please? This Thunderbolt?

Mr. Stoner: Yes, please.

Mr. Parsons: Have any objection to my introducing this?

Mr. Stoner: I was going to introduce it myself, unless you want to.

Mr. Parsons: All right.

We'd like to introduce this into evidence, your Honor.

(Whereupon the document, The Thunderbolt, was marked for identification as the Complainant's Exhibit 1 and was received in evidence as Complainant's Exhibit 1 and said exhibit is attached herewith and made a part of this report of proceedings as a true and correct copy of the document it purports to be as certified to by this Official Reporter.)

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION
COMPLAINANT'S EXHIBIT 1

KENNEDY STARTS SECOND RECONSTRUCTION ACT (SEE PAGE 4)

The Thunderbolt

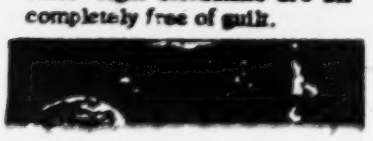
THE WHITE MAN'S VIEWPOINT

ISSUE NO. 35 OCTOBER, 1961

"Freedom Riders" Burn Bus While Bobby Kennedy Blames 9 Innocent White Alabamians

ANNISTON BUS BURNING TRIAL

The bus burning trial will be in October 30. Robert "Bobbie Socks" Kennedy, at that trial, intends to destroy nine innocent White Christian Americans in Anniston, Alabama so as to intimidate other White Christian Patriots throughout the South and all over America. He intends to make an example out of them even though he possesses positive proof that they are all innocent. Bobbie Kennedy and his FBI agents know that the communist "freedom riders" set the Greyhound bus on fire from the inside near Anniston and that Kenneth Adams and the other eight defendants are all completely free of guilt.



all innocent. Bobbie Kennedy and his FBI agents know that the communist "freedom riders" set the Greyhound bus on fire from the inside near Anniston and that Kenneth Adams and the other eight defendants are all completely free of guilt.

ATTORNEY GENERAL KENNEDY

However, if Kennedy and his underlings could get convictions, they believe it would help them to get an even higher percentage of the negro vote in the large Northern states and all of the others. Then, in 1964, Robert's brother, John Kennedy, would get 100% of the negro vote instead of only 85%. That is why Bobbie Kennedy, the Attorney-General of the United States, and his so-called Justice Department, are determined to convict nine innocent White men in U.S. District Court in Anniston and convict them with the full knowledge that they are Not guilty.

Bobbie Kennedy, J. Edgar Hoover, officials of CBS-TV, the NAACP, CORE and the Communist party are the plotters who conspired to send the integrated "freedom" buses to Alabama to cause trouble, and they are all a bunch of outside agitators. Quiet integration of buses in Alabama had already taken place on a limited scale without any violence. Diseased negro bus passengers had already eaten in formerly White bus station restaurants and used formerly White bus station rest rooms in violation of Alabama laws, but without violence. Peaceful integration did not suit Robert Kennedy, CORE, et al, so they resorted to the loudly heralded "freedom" rides so as to insure violence. They gave much advance publicity to the so-called freedom riders and announced the time schedule of their trips. Naturally, a few White citizens along the way shouted their protests, as they had a Constitutional right to do, but they were law-abiding and did not use violence. However, the communist "freedom" riders on the bus that went to Anniston were determined to have violence that would get them world-wide publicity and cursed because the White people of Anniston had only protested in a peaceful way. The communists have always advocated and used violence. The communists on the Greyhound bus had a remedy for the situation. After the bus had left the Anniston bus station and was about six miles out on the highway, the communist "freedom" riders set the bus on fire from the inside and then falsely accused the local White people of burning the bus - an old communist trick.

The communist goal is to destroy all opposition to forced integration and that is what Bobbie Kennedy and the FBI are helping them to do. They intend to turn the South over to the negro bloc vote as part of their conspiracy to subject America to the bondage of a communist dictatorship. They know that if they can send nine innocent White men to the federal penitentiary for 25 years, all resistance to integration will cease and the White race in the South will be wiped out with a combination of negro violence against Whites and the injection of negro blood into the White race through interbreeding. The South would then become another mongrel "Cuba" under the communist yoke.

The communists intend to force full integration on the White South. They will never be satisfied with "token" integration. They only use "token" mixing as the opening wedge. Then, they would push the White South into the cesspool of complete integration. That is why the communists concocted the Anniston bus case. If they could convict nine White innocent defendants, the way would then be paved for thousands of so-called freedom buses to roll into every city and town in Alabama and other Southern states. The communist, integrated buses would drive into every bus station. Droves of communists in racially mixed groups would pour out of the buses and go down the streets integrating everything. They would swarm into picture shows, private restaurants, churches, dance halls, swimming pools and everywhere else. Such a black plague would destroy law and order in Alabama and throughout the South. It would no longer be safe for White people to appear on the streets of their own towns and cities. The negroes with their negro pawns would then control the streets. If the nine White citizens of Anniston are convicted in federal court for a crime that they did not commit, that is what will happen. If the nine innocent White defendants are found to be Not guilty by the trial jury, there will be no more trouble-making "freedom" rides into Alabama. The object of the so-called "freedom" buses is to give freedom to the communists to enslave us White Christian Americans. That is why the future of America, to a very large extent, depends upon the verdict of the federal trial jury in the Anniston "bus burning" case. A verdict of Not guilty for the nine innocent defendants will be a victory for White Christian America and a major defeat for the Communist-Jewish Conspiracy.

The Congress of Racial Equality (CORE) is the Communist-front organization that is being used by the Jew-communists and sell-out politicians in Washington to invade the South and force White people to mix with black savages. CORE is actually directed by its Executive Secretary, the Jew Marvin Rich. The President of CORE is a negro, James L. Farmer, who belongs to many communist-front organizations. Farmer is married to a white woman and has a mulatto child by her, thereby realizing the dream of every buck negro.

(continued page 2)

Kenneth Adams And Family

BOBBY KENNEDY vs KENNETH ADAMS

On Sept.-1961, Bobby Kennedy, Attorney General of the United States hurriedly called a press conference. Representatives of the Nations Press, the Wire Services and T.V. men were called in. Everyone wondered what the urgent announcement would be. Bobby Kennedy stepped before the microphones, his boyish hair bob drouping over his forehead. Staring straight ahead, Kennedy announced the indictment of nine Anniston Alabama citizens for the burning of a "Freedom Rider" bus loaded down with communist agitators from New York.

This was an almost unprecedented action. Why had Bobby Kennedy personally taken control of the arrest investigation and indictment of 9 white men in Anniston, Alabama.

The entire "Freedom Rider" movement was from the beginning a pet Kennedy project. Bobby Kennedy favored, and had full knowledge of the first Freedom Ride bus to leave Washington, D.C. He knew that James Peck, Dr. Walter Bergman and others on the bus were dyed in the wool, dedicated communists. But, they were to serve Kennedy's purpose. The bus was followed by FBI cars and Kennedy Justice Department men phoned each city police chief along the route of the Freedom Bus. He demanded full police protection for the communist riders as they recklessly marched across the South violating Southern Segregation laws as well as our traditions and customs.

The Editor of "U.S. News and World Report" David Lawrence, wrote, "There are rumors that the demonstrations were actually undertaken with the knowledge, if not the advice of the Department of Justice. There is a suspicion growing that the Department of Justice is acting as a partisan of political causes and playing politics with the whole problem of desegregation."

INCIDENT CREATED

The Kennedy Plan was Diabolical:

(1) Before he could send armed Federal Marshalls and FBI men into Alabama - there had to be an incident.

(2) To force the ICC to outlaw Segregation on buses and force the closing of Colored waiting rooms and forcing the Blacks into the White waiting rooms - there had to be an incident.

(3) To cow down Whitemen with brute force, so as to intimidate others to cease resistance to Federal Race Mixing - White Patriots had to be arrested and framed.

In order to receive national publicity the communist freedom riders had to have violence so they could hold mass meeting in negro sections of the North and thereby raise millions of dollars for more race mixing adventures.

This is the reason Bobby Kennedy sent the communist Freedom riders rampaging through the South. This is why he has FBI stooges persecuting White Patriots in Anniston, Alabama.

(continued page 2)

"FREEDOM RIDERS" BURN BUS

(continued)

Farmer is a friend of Attorney-General Kennedy who is using the FBI in an effort to frame nine respectable White citizens of Anniston. The so-called freedom buses were loaded down with known communists and communist-fronters, such as James Peck who is a regular writer for several communist publications. Instead of being known as "freedom" buses, CORE's integrated buses should be called communist buses. It is a fact that Attorney-General "Bobbie Socks" Kennedy and his FBI agents are working in alliance with communists to carry out the platform of the Communist Party which proposes to turn the South over to black rule; that is exactly what will happen if Kennedy, the FBI and CORE communists succeed in registering and voting every ignorant and illiterate negro in the South. Their goal is a black South under a national communist dictatorship. A conviction of the nine Anniston defendants would insure the success of the communist race-mixing conspiracy in the South.

Robert Kennedy is determined to sew up the solid negro vote permanently for his brother and himself. In 1968, John Kennedy won't be able to run for re-election, so his brother Robert will then be a candidate for President and intends to get elected with the aid of the solid negro bloc vote and the bloc votes of other minorities. That is why Robert has gotten the Interstate Commerce Commission (ICC) to outlaw all Segregation practices in all buses, bus station waiting rooms, rest rooms and restaurants effective not later than January 1, 1962, with heavy penalties for anyone who dares to offer the negroes separate facilities. That is why Robert Kennedy had his brother John to appoint Thurgood Marshall, chief lawyer of the NAACP, to be a Judge on the U.S. Court of Appeals. Bobbie Kennedy and his co-conspirators are making an all-out effort to keep the solid negro vote by destroying the White Christian people of the South.

The national Democratic party and the national Republican party are trying to outbid each other in their efforts to corral the negro vote. In an effort to get that black vote, they are promising the negroes that they will take away all of the Constitutional rights that we White people have and that they will strip us Whites of our GOD-given freedoms. Both old parties have promised the negroes to take away the White race's right to survival. They are promising to give the negroes our White women. They tell them that they can go to school with White girls, sit by White women on buses and in restaurants and go swimming with them. At school and public dances, Kennedy, CORE, the NAACP and the communists assure the Negro that they will have the "right" to dance with White women and date them. In plain words, Kennedy, CORE and the FBI degenerates are promising our White women to the negroes in return for their votes. They know that convictions in Anniston would insure the success of their evil race-mixing conspiracy. That is why there must be No convictions of the nine innocent White defendants.

Even though Robert Kennedy, J. Edgar Hoover and the FBI integrators KNOW that the "freedom" bus was set on fire from the inside by the CORE communist "freedom" riders, they induced a federal grand jury to unjustly indict nine innocent White citizens of the Anniston area. The federal grand jury indicted Kenneth Adams, William Chappell, Jerome Couch, Jerry Eason, Frank B. Johnson, Cecil Lewallyn, Frank Tolbert and Jerry Willingham. These nine men are leading citizens of Anniston and highly respected by their neighbors and the entire community. Every one of them is a Christian who loves America and his White race. They are law-abiding citizens and would not violate any law. America needs more citizens like them because they are Patriots on the order of George Washington, Thomas Jefferson and Patrick Henry. It is the intent of Robert Kennedy and the FBI race-mixers to destroy the lives of these nine men and their families so as to corral the negro vote. They have been unjustly indicted for conspiracy and burning a Greyhound bus near Anniston and conviction would carry penalties of five and twenty years and result in the ruination of their lives and the lives of their innocent wives and children. If convicted, Kennedy would make certain that they never got out on parole. It would not be right for these respected White Christian Americans to be destroyed in prison and their wives and children put on relief just so that cheap sell-out politician and low-life tyrant, Robert Kennedy, can insure his future control of the negro vote.

The Anniston bus burning case is a political case. That is why Attorney-General Kennedy has sent his assistant, John Doar, from Washington to Alabama to unofficially direct the Prosecution. The trial will be in U.S. District Court for the Northern District of Alabama - Anniston Division in the post office building in Anniston in October

Political trials are out of place in America. If Southern Senators and Congressmen are as strong for Segregation and our Southern way of life as they claim, they will be happy to put pressure on Kennedy to stop the persecution of nine of Anniston's leading citizens by nol-prossing the indictments.

The grand jury should have indicted Bobbie Kennedy, J. Edgar Hoover, the FBI, certain officials of CBS-TV, the NAACP, CORE and the Communist party for conspiring to burn the bus instead of picking on nine innocent White men. The Kennedys are not willing to use force against the communists in Laos, Berlin or Cuba, but they unhesitatingly use armies of federal marshals and FBI agents against the White people of Alabama. In spite of their gigantic conspiracy against Alabama Whites, and especially against the nine Anniston Whites, they will never succeed in framing the innocent defendants. The nine defendants are represented by Attorney J.B. Stoner of Atlanta who is thoroughly familiar with the illegal methods that the FBI uses to frame innocent White Southerners. No amount of FBI subborned perjury will persuade an honest jury to convict innocent men. When the case goes to trial, the evidence will show that Kenneth Adams and the other eight defendants are completely innocent beyond the shadow of a doubt! BE SURE to write your Congressmen and Senators about this case NOW!

Join the National States Rights Party and help us fight such outrageous frame ups by the traitors in Washington. Join now to save America and the White Race

MORE PROOF →

Kenneth Adams

(continued)

Mr. Kenneth Adams, head of Alabama's Dixie Klans, Knights of the Ku Klux Klan is the main target of Bobby Kennedy. Mr. Adams is a man of great leadership ability and is loved by all his friends and followers. Segregation in North Eastern Alabama actually hinges on this mans work in Defending Segregation. Bobby Kennedy even admits that Kenneth Adams was not even near the bus that was burned. Kennedy has made the false charge of 'conspiracy' against Mr. Adams, hoping that paid pimps and FBI planted informers will perjur themselves and railroad Kenneth Adams into a Federal Penetentiary to serve a 25 year sentence. Bobby Kennedy thus intends to hold such a conviction over the heads of other White Patriots as to what will happen to them if they do not "peacefully integrate with Freedom Riders, Sit ins, wade ins, kneel ins and School mixing". WE ARE GOING TO FIGHT BOBBY KENNEDY AND HIS TRAITOROUS GANG OF FEDERAL DICTATORS WITH EVERY LEGAL MEANS AT OUR COMMAND. ARE YOU WITH US? IF SO, JOIN WITH US TODAY. USE THE COUPON ON THE BACK PAGE TO ORDER EXTRA COPIES OF THIS THUNDERBOLT FOR YOUR FRIENDS. WE WILL HOLD MASS PROTEST MEETINGS - IF YOU WANT TO HELP IN THIS URGENT WORK - PICK UP YOUR PHONE AND CALL ME LONG DISTANCE (Station to Station will only cost you a few cents) AND I WILL TELL YOU WHAT CITY IN NORTHERN ALABAMA WHERE YOU CAN MEET WITH US FOR OUR NEXT MASS RALLY TO PROTEST BOBBY KENNEDY'S VICIOUS ATTACK ON SOUTHERN WHITE PEOPLE. WE WILL NOT SURRENDER - IF YOU WANT TO HELP - PHONE ME, DR. EDWARD R. FIELDS AT STATE 7-6818.

Oklahoma

State Organizer Gary Smith Announces:

The N.S.R.P. of Oklahoma is starting an extensive membership drive here. We will appreciate any small personal contributions, or help in any other way such as suggesting new members, moral support, and common consideration of our views and proposals. This appeal is not only to local readers, but to all friends of the White Race everywhere. If you can help in any way WRITE: National States Rights Party P. O. Box 714 Cushing, Oklahoma.

Georgia

Rev. Henry G. White, State Chairman announces the appointment of Miss Letty Jane Walraven as Georgia NSRP Secy Treas. Rev. White has had literature printed for local distribution and will be able to devote full time to organizing in the Peach State. A series of meetings are being planned. For more information write,

National States Rights Party P.O. Box 6?4, Dalton, Georgia

6—Saturday, Sept. 23, 1961 EVENING OUTLOOK

Beth Sholom Speaker

SM Rabbinical Student Tells Why He Became 'Freedom Rider'

By ANNE MORGENTHALER
Evening Outlook Religion Editor

His experience as a "Freedom Rider" has brought him personal satisfaction, declared a 22-year-old rabbinical student.

"I believe the work of 'Freedom Riders' has given the Southern Negro confidence to keep fighting for his rights as a human being," said Philip Posner who is free on a $500 bond after spending 40 days in a Mississippi prison.

The son of Mr. and Mrs. Isadore Posner, 2312 25th St., Santa Monica, Posner described his experiences during the Friday sabbath service at Beth Sholom Temple. Posner was also singled out for the honor of blowing the ram's horn in the closing Yom Kippur service at the temple.

He is a senior at UCLA and also attends the Hebrew Union College in Hollywood.

Posner was arrested July 30 when he sat with Negro men on a bench at the railroad station in Jackson. He spent 38 days in a 9 by 6-foot maximum security cell at the state prison in Parchman, Miss. He plans to return for trial in a Haynes County court on April 16.

'FREEDOM RIDER' Philip Posner relates his experience was grim but it has brought him personal satisfaction. (Evening Outlook Photo.)

Describes Arrest

"We knew we were breaking the laws of Jackson, but they are illegal laws," Posner stated. "A railroad station is a place for interstate commerce. We were arrested three minutes after we sat down. We did not disturb the peace as the arrest warrants charged.

"I was motivated to join the Freedom Riders in a concern for justice and righteousness. In the Jewish faith there is a belief that no person has a right to desist from doing work which must be done, even if he cannot complete the job by himself. In the Old Testament Isaiah commanded that we open the blind eyes of those who sit in the darkness of the prison house.

"Those who are ignorant have called us Communists. But what we are really fighting for is to make this a true democracy. With so many uncommitted nations in the world our country gives a poor impression to Negro statesmen who cannot eat with white people in Washington, D.C. restaurants.

"The work of the 'Freedom Riders' has been effective. Some 120 train stations have been integrated and another 20 communities integrated on their own."

Visited By Rabbi,

During his prison stay Posner said he and other "riders" were visited by a rabbi

"The rabbi got in trouble for visiting us. A member of his synagogue's board of directors resigned in protest to the visit. The Jews in the South are worried about helping 'Freedom Riders' because they feel there is a great deal of anti-Semitism in the South. They don't want more animosity against themselves.

"The Negro churches in the South provide the ideas for members to work for their rights. Except for a few clergymen like Martin Luther King, however, the leadership is pretty bad."

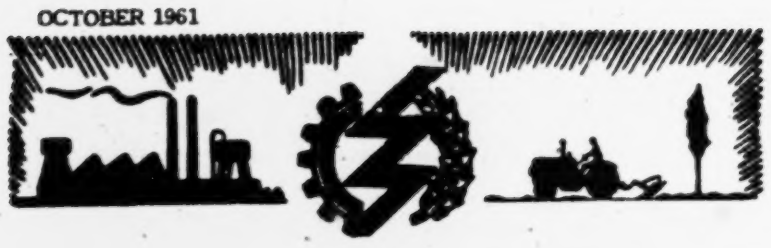
Posner said he became interested in the plight of the Southern Negro during his two-year membership in the National Association for the Advancement of Colored People. The NAACP branch met at UCLA until this fall. It has been barred from meeting on campus this fall.

He related he was not abused in prison. The diet was decent although it lacked in protein and Vitamin C foods, he stated.

When he returns for trial on April 16 Posner said he expects to be found guilty. He believes his bond will be raised to $1,500. Money for bail and appeal is being posted by the Congress of Racial Equality, he said.

Posner is a graduate of Santa Monica High School, Santa Monica City College and he also attended religious school at Beth Sholom Temple.

OCTOBER 1961



Workers and farmers fight communism and race mixing. Read--THE THUNDERBOLT, is the official White Racial Organ of the National States Rights party. . . .This newspaper is published monthly free for members. Subscription rates for non-members is $3 per year.

"THE THUNDERBOLT"
P.O. BOX 783
BIRMINGHAM, ALABAMA

Dr. Edward R. Fields. . . . . Editor
ISSUE 35 . . . . . OCTOBER 1961
Phone STate 7-6818.

EDITORIAL

My Dear Fellow Americans: On this page we give absolute proof that the NAACP and CORE are NOT negro organizations and NEVER have been negro organizations. They are Jewish organizations. Their officers are Jews, their financiers are Jews, the entire philosophy behind mongrelization is imbedded in the evil tennants of Judaism.

The Jew believes in keeping the Jewish race pure. They fight against inter-marriage of their own people. They live in Ghetto neighborhoods, keep Gentiles out of their Synagogues, stya together in Jewish Community centers, send their kids to private Jewish Day Schools.

BUT THIS SAME FORM OF SEPARATION IS ALL TO BE FORBIDDEN TO WE WHITE PEOPLE. WE ARE TO BE THROWN TO THE WOLVES (the negro animals, that is.)

Please read and re-read the Philadelphia report on this page. This Jewish Judge Gold, shrugs off the raping of White Christian girls by negro rapists.

The negro who actually is a school teacher (perhaps in a mixed school) pretended to be a policeman when he tricked the little girls into getting into the car. Most Christian Judges would have given the negro monsters the death penalty - BUT NOT THE CHRIST HATING JEW. The Jew says "So what she was only a White Christian."

This filthy kike, Judge Gold actually tells the parents of these poor little raped girls, "They will get over it." If this happened just 30 years ago, the White people probably would have dragged this rotten Jew out of his black robes and hanged him from the nearest tree. But our people have weakened and if we have but one task left it is to give the Whiteman his honor, courage and strength back.

The satanic Jew is the mortal enemy of the White Race, the Jew is of asiatic blood, and hates everything about the White Christian people.

I hope this page shows you the depths to which the Jew hates our very being. How he finances and rules the organizations seeking the mongrelization of our children. How in his warped mind he gets a perverted delight in nigger rapes of innocent little White girls.

O' GOD - HOW LONG WILL THY CHILDREN HAVE TO SUFFER AT THE HANDS OF THE BLOODTHURSTY JEW.

The Philadelphia Inquirer

MONDAY MORNING, OCTOBER 2, 1961

Deluge of Protests Hits Gold's Leniency On 2 Sex Offenders

Henry Williams, Jr., girls' molester who received lenient treatment.

Judge Joseph E. Gold, who placed confessed sex offender on 10 years probation.

Irate parents voiced indignation Sunday because a confessed sex offender was put on 10 years' probation by Judge Joseph Gold in the face of a psychiatrist's report that he was sane and knew the difference between right and wrong at the time of the acts.

Assistant District Attorney William D. Harris, who prosecuted the case, said he was deluged with calls from persons "wanting to know what we can do about such outrages."

2 GIRLS MOLESTED

The defendant, Henry Williams, Jr., 24, of 46th st. near Walnut, pleaded guilty to molesting sexually two 12-year-old girls last summer. At the time he taught at Walton Elementary School, 28th and Huntingdon sts., but has since been fired by the Board of Education.

His companion in the case, Edward F. Green, 23, of Wilton st. near Arch, was sent to Norristown State Hospital by Judge Gold for 90 days' observation.

Judge Gold made his decision while sitting in Quarter Sessions Court. He is President Judge of Common Pleas Court 6.

PSYCHIATRIC TESTIMONY

Green's sentence was made despite a report by Dr. John G. Torney, director of the neuropsychiatric department of Quarter Sessions Court, that the man needed no further treatment. Dr. Torney also wrote a report in which he said Williams was sane.

In passing the sentences Judge Gold said that the two little girls "will get over" their experience, and that he would "take his chances" with Williams and Green.

RIDING IN SPORTS CAR

The offenses to which the men pleaded guilty occurred on June 21.

According to authorities, Williams, a married man, said that he and Green were riding around in Williams' sports car when they decided to visit a West Philadelphia woman friend.

The woman was not at home. They cruised the streets. Shortly after 11 P. M. they spotted the two girls walking near the intersection of 53d and Woodland sts.

The men asked the little girls what they were doing out so late.

Both men said they were police officers, the authorities continued. The girls got inside the car.

Williams said they drove to an alley near 47th st. and Springfield ave., where the girls were forced to disrobe and then attacked.

The girls' parents have protested bitterly the leniency shown by Judge Gold.

Associated Press Wirephoto

JACK GREENBERG
Succeeds Thurgood Marshall

White Lawyer New NAACP Legal Counsel

NEW YORK, Oct. 5 (AP)—The National Association for the Advancement of Colored People has named Jack Greenberg, a white lawyer, as its top legal representative.

Greenberg, appointed Wednesday succeeds Thurgood Marshall, a Negro, who had served as the NAACP's chef counsel since 1938.

President Kennedy has appointed Marshall to the U.S. Court of Appeals in the Second Circuit, which sits in New York City.

Greenberg, 36, has spent almost his entire career on the NAACP legal staff and has been Marshall's chief assistant.

• • •

MARSHALL, asked for comment on the appointment of a white man as his successor, said: "As those who are fighting discrimination, we cannot afford to practice it."

Mrs. Constance Baker Motly, a Negro lawyer on the NAACP staff, was named as Greenberg's chief assistant. She represented Negro children in the recently successful effort to break school segregation in Atlanta.

Greenberg now has responsibility for more than 400 pending civil rights cases involving more than 2,000 persons.

kids to private Jewish Day Schools.

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O' GOD - HOW LONG WILL THY CHILDREN HAVE TO SUFFER AT THE HANDS OF THE BLOODTHURSTY JEW. WHITEMAN AWAKE - JOIN, WORK AND FIGHT, WE HAVE NOTHING TO LOSE BUT OUR NEGROES, PORTO RICANS AND JEWS. SAVE OUR SWEET INNOCENT LITTLE WHITE CHILDREN.

The Face of the NAACP.

Sometimes a picture can speak louder than a thousand words. We believe that the one above can. We call it the "Face of the NAACP." This picture shows Thurgood Marshall, mulatto special counsel for the NAACP, receiving a special NAACP Life Membership plaque from Kivie Kaplan, co-chairman of the NAACP Life Membership Committee, while Arthur B. Spingarn, NAACP president looks on with approval. Take a good look at this picture. Thurgood Marshall is no Negro—he is a mulatto! Spingarn and Kaplan are not Negroes, either.

REAL ENEMY IN NEW ORLEANS

JEWISH WOMEN SAY THANKS

On September 8, the Greater New Orleans Section of National Council of Jewish Women thanked self out city officials over the way six schools were integrated. The Jewish Women approved police barracades and police brutality against White people. They expressed hope that these same police terror methods would be used to mix the rest of Louisiana.

Ten Thousanth

Rabbi Emmet A. Frank, above, has become the 10,000th life membership subscriber to the National Association for the Advancement of Colored People, according to NAACP officials in New York.

NOW ITS OFFICIAL

We have always maintained that the Jew Jack Greenberg was real head of the NAACP legal attack against the White South. Now its official, with Thurgood Marshall, a Kennedy Federal Judge - They have come out and announced Jack Greenberg at the head of the NAACP legal dept. This leaves them with Arthur Spingarn, Jew President of NAACP and Kevie Kaplan as head of the life membership fund raising committee. Thus, the NAACP is an ALL Jewish organization with no negroes running it at all.

With CORE, Freedom Riders being headed by the Jew Marvin Rich - what more do we need to know? it is the evil, Christ hating Jew who is out to destroy the White Race and monogrelize our blood for all time to come. Now that we know who the enemy is, lets work to free America from his communistic rule.

KENNEDY BROTHERS START SECOND RECONSTRUCTION OF THE SOUTH

The Kennedy brothers came South, asked for our vote AND WOULD NEVER HAVE BEEN ELECTED WITHOUT THE VOTES THEY RECEIVED IN THE SOUTH.

Kennedy now has the Soviet FBI flooding the South, raiding voter registeration officies, forcing our voting officials to register thousands of illiterate negroes who cannot read or write. They hope to start a Second Reconstruction in the South. Kennedy wants us to have negro Governors, negro Senators and Congressman, legislatures, Mayors, etc. Kennedy seeks to force us under absolute Black rule. Take the Atlanta vote, Segregationist Maddox received 38,000 White votes, race mixed Ivan Allen received 32,000 nigger votes, 25,000 Jew bloc votes and only a handful of White votes.

Atlanta is completely under the heel of the Jew-negro bloc machine. (Never forget the Jew bloc vote in your community - the Jew sees to it that his wife and children if they are 18 or 21 are registered to vote. Then the highly organized Jewish community votes to the man, often achieving 100% turnout.) Always remember the Jew is the 'brains' behind all negro attacks on White Rights!

Kennedy, who is surrounded by Jews, Ribicoff, Douglas Dillon, Goldberg, his speech writer, press secy., etc., are all Jews - we could go on and on listing them as Kennedy has placed more Jews in the Government than any other American President.

GREATEST SLAP OF ALL

The appointment of Thurgood Marshall to a life time, $25,000 a year Federal Judgeship - was the final, ultimate kick in the groin of a already knocked down and battered Southland. This is his final show of contempt and hatred for our people and customs and way of life. It came as Congress recessed so White Congressman could not protest. Kennedy has proven to one and all that he is the lowest, dirtiest, and treasoness political rat that ever lived. Kennedy's family is worth 400 million dollars from the whisky racket. Neither of the Kennedy brothers ever had a job in their miserable lives. They sit in Washington, their feet on the desk, arrogantly giving orders that we White People be ground into the dirt to be ruled by wild, raping negro beasts. ARE YOU FED UP TO HERE? THEN JOIN NSRP NOW AND HELP FREE AMERICA FROM THIS SCOURAGE.

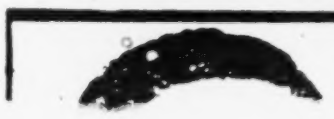
KENNEDY'S START SECOND REC

THE PLOT TO IMPOSE "BLACK SUPREMACY" UPON THE SOUTH...

It has not been reported by the commercial press, but the trouble-making, alien-controlled National Association for the Advancement of Colored People (NAACP) has for some time been promoting a plan which, if successful, will place the South's vast negro population (numbering over 11,000,000) in a position of absolute dominance over the government and institutions of the Old South. The plan, simply, is to arouse the racial and political consciousness of Southern negroes in the same way they have been aroused in the North --and to translate this negro racism into action at the polls with the idea of wresting political control from Southern whites...

The key feature of this plan is the registration of as many Southern negroes as possible as voters. In this connection it is significant to note that during the past few years, negro voter registration in most Southern states has been quietly on the increase --in some cases having doubled, tripled and more than quadrupled since the last presidential election in 1952...Since negroes constitute a very substantial percentage of the South's population, and since many Southern communities actually have more negroes than whites, this means that ultimately, bloc-voting negroes under NAACP leadership and agitation can and will take over local government in many localities --unless something is done! Equally important, they will wield a balance of power in ALL the Southern states as in fact they do in the North already in many instances. The danger is that unless this threat is headed off, the South's traditional "white supremacy" will not only vanish, but will be replaced by a militant "black supremacy"...

Those who doubt that the people of the South would indeed ever submit to "black supremacy" would be well advised to consider the lessons of history--particularly in the light of recent developments. Because it is important to note that within the memory of living men, the South did undergo a period of "black supremacy"! For it was only 75 years ago that radical Northerners imposed a vicious regime of Federally enforced "integration" upon the South under which ONLY negroes (and imported Northern "liberals) could vote and hold office. No white Southern man or woman was permitted in those years to hold office, vote, perform jury duty or otherwise enjoy citizenship --that was the exclusive privilege of negroes. In Alabama, South Carolina, Georgia, Louisiana and other Southern states the state capitals and legislatures were taken over by Africans and Northern renegade whites, as were law enforcement duties and other functions of state, country and city governments. This was the very apex of "black supremacy". Two coal-black negroes represented the state of Mississippi in the U.S. Senate between 1870 and 1880. Buck negroes represented the states of Georgia, South Carolina, Alabama and Florida during this period in the House of Representatives in Washington. On one occasion, 5 years after



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Senator Hiram Rhodes Revels

To many misguided Northerners the term, "White Supremacy", describes a hateful, un-American institution under which bigoted, prejudiced and ignorant Southerners oppress and abuse negroes, and otherwise deny them "equality". But today there are still men and women living in the South who can remember the time when Northern radicals of another day imposed a regime of "BLACK SUPREMACY" upon the South under which no Southern white man or woman could vote, hold office or enjoy citizenship -- a regime under which the negroes pictured on this page actually represented the state of Mississippi in the U.S. Senate....

Senator Blanche Kelso Bruce

the end of the Civil War, the great Jefferson Davis himself was ousted from his seat in the U.S. Senate by a radical northern majority, and a negro as black as the ace of spades replaced him as Senator from Mississippi...It was under these conditions, with white Southerners not allowed to vote, and with negroes sitting as their representatives in the U.S. Congress, that fanatic Northern politicians pushed through the infamous (and illegal) 14th Amendment in 1868. Eighty-six years later, in May of 1954, nine modern fanatics sitting on the U.S.

Roy Frankhouser Hearing Soon

Roy Frankhouser will have a jury hearing the end of October in the Hartsfield - Jenkins frame up case in Atlanta. Since our last Thunderbolt (#34) Detective Capt. R.E. Little (who assaulted Frankhouser - but claims Frankhouser assaulted him) has added a new charge against Roy Frankhouser. He now charges that an empty fountain pen which can hold a tear gas cartridge is a case of "carrying a pistol without a license". Another obvious frame up in 'East Berlin' Atlanta. Roy Frankhouser is now free on Bond waiting his hearing. Mr. Frankhouser is continuing his full time efforts organizing for N.S.R.P. This case has not discouraged him, but has instilled in him a further desire to continue with a redoubled all out drive.

Mr. Frankhouser wishes to thank his many friends who have contributed to his defense. We have retained two of the South's foremost defenders of White Patriots. Attorney James R. Venable and Attorney J. B. Stoner. We therefore are confident of eventual acquittal in this case. Contributions in this case should be sent direct to National States Rights Party. P.O. Box 783, Birmingham, Ala. We hope to be able to announce a Victory in this case next month.

P.S. Note photostatic clipping of Jerry Dutton who also was assaulted by Dect. Little. Little himself has been arrested by county authorities and is now awaiting trial.

Pennsylvanian Faces Trial In Klan Rally Flareup Here

An organizer for the National States Rights Party Friday waived preliminary hearing in Municipal Court and was ordered held for Fulton Criminal Court on charges of assault and battery and carrying a pistol without a license.

Judge James E. Webb assessed a $200 bond against Roy E. Frankhauser Jr., 21, of Reading Pennsylvania.

Frankhauser was taken into custody Sept. 4 at a Ku Klux Klan rally at Almond Park. Detective Capt. R.E. Little charged Frankhauser kicked him on the leg and said he subsequently found a fountain pen-type tear gas gun in Frankhauser's possession.

Attorney James Venable said as the scheduled hearing began that he understood the charges involved state law and asked that the hearing be waived.

N.S.R.P. Stands By It's Members

ONSTRUCTION OF SOUTH

Supreme Court were destined to use the same 14th Amendment (along with the writings of certain pro-Communist sociologists) as the basis for forcing compulsory mongrelization once again upon the South...

Due to the courageous efforts of aroused Southern whites and the old Ku Klux Klan, the South eventually wrested political control away from negro and carpetbag rule, thus ending the era of "black supremacy" and restoring majority rule (i.e. "white supremacy"). But within recent years Northern radicals in league with the NAACP and other similar groups have undertaken a revived campaign to impose a new "black supremacy" upon the South. This time they are using Supreme Court decrees instead of Federal bayonets to enforce their plan. And instead of defranchising white voters, they are seeking to achieve the same goal through propaganda --mainly in the form of appeals for "tolerance", "moderation" "brotherhood" and other thinly disguised brain-washing devices...The idea is to take over the polls before white Southerners realize what has happened...

The above Currier & Ives drawing (made in 1872) was recently featured in the negro magazine, EBONY. It shows seven negroes who represented the states of Mississippi, Alabama, South Carolina, Florida and Georgia in Congress during the infamous era of "Black Supremacy" which followed the Civil War. It serves as a reminder to Southern blacks that they were once dominant in the South, and can be again if they all become active voters. One negro magazine, JET, recently carried an NAACP chart showing the tremendous increase in Southern negro voter reg-

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CONCLUSION: Today a relatively small number of militant, bloc-voting Northern negroes are already wielding a dangerous balance of power in the North. In the South, where they are vastly more numerous (and where the white population is relatively much smaller than in the North) negroes can and will literally take over if the NAACP plan for mass negro voter registration is implemented -- as in fact it is already in the process of being implemented. Southerners must not forget that only 75 years ago radical Northerners turned the South into an interracial Hell where "black supremacy" was the order of the day --or that a new crop of Northern radicals, backed by the U.S. Supreme Court, and spearheaded by the NAACP, is intent upon restoring the blessings of a new, streamlined version of "black supremacy" once again in the South. Thus, whether white Southerners want it or not, they are being forced to choose between "white supremacy", or "black supremacy"; there is no middle ground. One thing is certain: unless the South acts at once to head off the forthcoming massive negro registration at the polls, the issue will be decided for them--and it won't be in favor of "white supremacy"....

No Mixing For Caroline

76% of all Students in Washington D.C. schools are negroes. As a result, Washington is the black capitol of America. Its public schools are the lowest, vilest, filthiest, and most disorderly in the nation. White girls, EVEN TEACHERS have been raped right on school property. Eisenhower sent his grandchildren to an all White private school in Virginia.

Now comes President Kennedy. He is building a private school room right in the Whitehouse, desks, blackboards and all. He has picked out a few White children from very wealthy families to attend these private White classes with Caroline. Kennedy, with all his many millions, looks down upon the Patriotic White working class of people and feels we are no better than niggers.

How long will White people permit this arrogant snob to lord his wealth and 'social position' over decent, honest hard working Americans?

Atlanta

TO MUCH LAW ENFORCEMENT?

At one time America was short of Law Enforcement in the Far West and other places. Much has been written about lawlessness and the courageous Sheriffs and Deputies, vigilanties and other groups which fought for law and order.

Now there is a reverse situation. Many cities have built huge police departments, (Atlanta Georgia has the largest police force of any city of its size in the WORLD). Atlanta has policemen loitering on every corner watching every

much has been written about lawlessness and the courageous Sheriffs and Deputies, vigilanties and other groups which fought for law and order.

Now there is a reverse situation. Many cities have built huge police departments, (Atlanta Georgia has the largest police force of any city of its size in the WORLD). Atlanta has policemen loitering on every corner watching every one, like "Big Brother". One dare not miss the cross walk or spit on the street for fear of immediate arrest. Constitutional Rights are surpressed when White pickets are immediately arrested if they protest mixing. White rallies are surrounded by police cars and paddie wagons to intimidate the public from "peaceible assembly". Who ever visualized the law could become so tyrannical. It has now come to the point when we must seek new measures to protect the people from the police. Russia is an armed camp with lots of "law and order", but what we need is freedom. "THE LEAST GOVERNED ARE THE BEST GOVERNED.

Police Officer Faces Charge Of Assault

Atlanta Police Capt. R. E. Little will appear in Decatur Recorder's Court next Thursday to face charges of assault and battery against a teen-ager arrested on Aug. 30 when Atlanta desegregated four high schools.

Capt. Little has posted $300 bond on a warrant sworn out by Jerry Dutton, one of four DeKalb County youths arrested near Murphy High School and sentenced to 30 days in the city stockade. The four were released several days later.

Dutton charges he was manhandled by Capt. Little.

The officer will appear before Recorder's Court Judge John E. Verner, who signed the warrant. It was served on Capt. Little by the Fulton County sheriff's office.

Louisville

O.K. FOR NEGROES TO AGITAGE?

Everytime one of us Segregationists speaks out for White Rights or hands out a leaflet - the Race mixing enemy shouts "agitator, agitator".

One of the worst race mixing traitors is one Barry Bingham owner of monopoly control of both Louisville newspapers, "The Courier Journal" and evening "Times". Mr. Bingham who braggs how quickly his city sold out to the mixers states! "Without the agitation (sit - ins, stand-ins, wade-ins, etc) I don't think we would have come along quite so fast".

This low life scoundrel would take away all our rights and give our daughters to the niggers, WHITE MAN STAND UP AND FIGHT THIS DISPICABLE ENEMY.

RIOT AREAS ON

← Negro Cops

WHITE YOUTH CLUBED UNCONSCIENCE BY BRUTAL NEGRO COPS

The White group should have stormed and stomped these Negro cops into the gutter. Negroes will beat our White policemen and rescue their own kind when arrested. STAND UP AND FIGHT NEGRO COPS. NO NEGRO EVER HAS THE RIGHT TO ARREST A WHITE MAN. The Negro says he will "meet violence with violence." What more do we need to hear? This means open war fare between Blacks and Whites. ARE YOU READY TO DEFEND YOUR PEOPLE?

THE INTERNATIONAL JEW

The Jew in Character and Business

THE Jew is again being singled out for critical attention throughout the world. His emergence in the financial, political and social spheres has been so complete and spectacular since the war, that his place, power and purpose in the world are being given a new scrutiny, much of it unfriendly. Persecution is not a new experience to the Jew, but intensive scrutiny of his nature and super-nationality is. He has suffered for more than 2,000 years from what may be called the instinctive anti-Semitism of the other races, but this antagonism has never been intelligent nor has it been able to make itself intelligible. Nowadays, however, the Jew is being placed, as it were, under the microscope of economic observation that the reasons for his power, the reasons for his separateness, the reasons for his suffering may be defined and understood.

In Russia he is charged with being the source of Bolshevism, an accusation which is serious or not according to the circle in which it is made; we in America, hearing the fervid eloquence and perceiving the prophetic ardor of young Jewish apostles of social and industrial reform, can calmly estimate how it may be. In Germany he is charged with being the cause of the Empire's collapse and a very considerable literature has sprung up, bearing with it a mass of circumstantial evidence that gives the thinker pause. In England he is charged with being the real world ruler, who rules as a super-nation over the nations, rules by the power of gold, and who plays nation against nation for his own purposes, remaining himself discreetly in the background. In America it is pointed out to what extent the elder Jews of wealth and the younger Jews of ambition swarmed through the war organizations—principally those departments which dealt with the commercial and industrial business of war, and also the extent to which they have clung to the advantage which their experience as agents of the government gave them.

In simple words, the question of the Jews has come to the fore, but like other questions which lend themselves to prejudice, efforts will be made to hush it up as impolitic for open discussion. If, however, experience has taught us anything it is that questions thus suppressed will sooner or later break out in undesirable and unprofitable forms.

The Jew is the world's enigma. Poor in his masses, he yet controls the world's finances. Scattered abroad without country or government, he yet presents a unity of race continuity which no other people has achieved. Living under legal disabilities in almost every land, he has become the power behind many a throne. There are ancient propheries to the effect that the Jew will return to his own land and from that center rule the world, though not until he has undergone an assault by the united nations of mankind.

The single description which will include a larger percentage of Jews than members of any other race is this: he is in business. It may be only gathering rags and selling them, but he is in business. From the sale of old clothes to the control of international trade and finance, the Jew is supremely gifted for business. More than any other race he exhibits a decided aversion to industrial employment, which he balances by an equally decided adaptability to trade. The Gentile boy works his way up, taking employment in the productive or technical departments; but the Jewish boy prefers to begin as messenger, salesman or clerk anything—so long as it is connected with the commercial side of the business. An early Prussian census illustrates this characteristic: of a total population of 269,400, the Jews comprised six per cent or 16,164. Of these, 12,900 were traders and 1,164 were workmen. Of the Gentile population, the other 94 per cent, or 153,236 people, there were only 17,000 traders.

A modern census would show a large professional and literary class added to the traders, but no diminution of the percentage of traders and not much if any increase in the number of wage toilers. In America alone most of the big business, the trusts and the banks, the natural resources and the chief agricultural products, especially tobacco, cotton and sugar, are in the control of Jewish financiers or their agents. Jewish journalists are a large and powerful group here. "Large numbers of department stores are head by Jewish firms," says the Jewish Encyclopedia, and many if not most of them are run under Gentile names. Jews are the largest and most numerous landlords of residence property in the country. They are supreme in the theatrical world. They absolutely control the circulation of publications throughout the country. Fewer than any race whose presence among us is noticeable, they receive daily an amount of favorable publicity which would be impossible did they not have the facilities for creating and distributing it themselves. Werner Sombart, in his "Jew and Modern Capitalism" says, "If the conditions in America continue to develop along the same lines as in the last generation, if the immigration statistics and the proportion of births among all the nationalities remain the same, our imagination may picture the United States of fifty or a hundred years hence as a land inhabited only by Slavs, Negroes and Jews, wherein the Jews will naturally occupy the position of economic leadership." Sombart is a pro-Jewish writer.

The question is, If the Jew is in control, how did it happen? This is a free country. The Jew comprises only about three per cent of the population; to every Jew there are 97 Gentiles; to the 3,000,000 Jews in the United States there are 97,000,000 Gentiles. If the Jew is in control, is it because of his superior ability, or is it because of the inferiority and don't-care attitude of the Gentiles?

It would be very simple to answer that the Jews came to America, took their chances like other people and proved more successful in the competitive struggle. But that would not include all the facts. And before a more adequate answer can be given two points should be made clear. The first is this: all Jews are not rich controllers of wealth. There are poor Jews aplenty, though most of them even in their poverty are their own masters. While it may be true that the chief financial controllers of the country are Jews, it is not true that every Jew is one of the financial controllers of the country. The classes must be kept distinct for a reason which will appear when the methods of the rich Jews and the methods of the poor Jews to gain power are differentiated. Secondly, the fact of Jewish solidarity renders it difficult to measure Gentile and Jewish achievements by the same standard. When a great block of wealth in America was made possible by the lavish use of another block of wealth from across the seas, that is to say, when certain Jewish immigrants came to the United States with the financial backing of European Jewry behind them, it would be unfair to explain the rise of that class of immigration by the same rules which account for the rise of, say, the Germans or the Poles who came here with no resource but their ambition and strength. To be sure, many individual Jews come in that way, too, with no dependence but themselves, but it would not be true to say that the massive control of affairs which is exercised by Jewish wealth was won by individual initiative; it was rather the extension of financial control across the sea.

That, indeed, is where any explanation of Jewish control must begin. Here is a race whose entire period of national history saw them peasants on the land, whose ancient genius was spiritual rather than material, bucolic rather than commercial, yet today, when they have no country, no government, and are persecuted in one way or another everywhere they go, they are declared to be the principal though unofficial rulers of the earth. How does so strange a charge arise, and why do so many circumstances seem to justify it?

Begin at the beginning. During the formative period of their national character the Jews lived under a law which made plutocracy and pauperism equally impossible among them. Modern reformers who are constructing model social systems on paper would do well to look into the social system under which the early Jews were organized. The Law of Moses made a "money aristocracy," such as Jewish financiers form today, impossible because it forbade the taking of interest. It made impossible also the continuous enjoyment of profit wrung out of another's distress. Profiteering and sheer speculation were not favored under the Jewish system. There could be no land-hogging; the land was apportioned among the people, and though it might be lost by debt or sold under stress, it was returned every 50 years to its original family ownership, at which time, called "The Year of Jubilee," there was practically a new social beginning. The rise of great landlords and a moneyed class was impossible under such a system, although the interim of 50 years gave ample scope for individual initiative to assert itself under fair competitive conditions.

If, therefore, the Jews had retained their status as a nation, and had remained in Palestine under the Law of Moses, they would hardly have achieved the financial distinction which they have since won. Jews never got rich out of one another. Even in modern times they have not become rich out of each other but out of the nations among whom they dwelt. Jewish law permitted the Jew to do business with a Gentile on a different basis than that on which he did business with a brother Jew. What is called "the Law of the Stranger" was defined thus: "unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury."

Being dispersed among the nations, but never merging themselves with the nations and never losing a very distinctive identity, the Jew has had the opportunity to practice "the ethics of the stranger" for many centuries. Being strangers among strangers, and often among cruelly hostile strangers, they have found this law a compensating advantage. Still, this alone would not account for the Jew's preeminence in finance. The explanation of that must be sought in the Jew himself, his vigor, resourcefulness and special proclivities.

Very early in the Jewish story we discover the tendency of Israel to be a master nation, with other nations as its vassals. Notwithstanding the fact that the whole prophetic purpose with reference to Israel seems to have been the moral enlightenment of the world through its agency, Israel's "will to mastery" apparently hindered that purpose. At least such would seem to be the tone of the Old Testament. Divinely ordered to drive out the Canaanites that their corrupt ideas might not contaminate Israel, the Jews did not obey, according to the old record. They looked over the Canaanitish people and perceived what great amount of man-power would be wasted if they were expelled, and so Israel enslaved them—"And it came to pass, when Israel was strong, that they put the Canaanites to tribute, and did not utterly drive them out." It was this form of disobedience, this preference of material mastery over spiritual leadership, that marked the beginning of Israel's age-long disciplinary distress.

The Jews' dispersion among the nations temporarily (that is, for more than 25 centuries now) changed the program which their scriptures declare was divinely planned, and that dispersion continues until today. There are spiritual leaders in modern Judaism who still claim that Israel's mission to the nations is spiritual but their assertions that Israel is today fulfilling that mission are not as convincing as they might be if accompanied by more evidence. Israel throughout the modern centuries is still looking at the Gentile world and estimating what its man-power can be made to yield. But the discipline upon Israel still holds; he is an exile from his own land, condemned to be discriminated against wherever he goes, until the time when exile and homelessness shall end in a re-established Palestine and Jerusalem again become the moral center of the earth, even as the elder prophets have declared.

Had the Jew become an employe, a worker for other men, his dispersion would not probably have been so wide. But becoming a trader, his instincts drew him round the habitable earth. There were Jews in China at an early date. They appeared as traders in England at the time of the Saxons. Jewish traders were in South America 100 years before the Pilgrim Fathers landed at Plymouth Rock. Jews established the sugar industry in the Island of St. Thomas in 1492. They were well established in Brazil when only a few villages dotted the eastern coast of what is now the United States. And how far

Introduction

HENRY FORD - ONE OF THE GREATEST AMERICANS WHO EVER LIVED.

Henry Ford was the first to produce an automobile for the masses. He started with nothing and built one of the World's greatest business empires. Ford found that at every turn, Jews were always fighting him. On one hand they would try and buy him out, while on the other they were trying to force him out of business. The Jews hated to see a Gentile becoming so successful. Henry Ford also saw that the Jew was also, cheating, lying and swindling the average White American in the street. In 1919 the Ford Motor Co., started an official company newspaper, "The Dearborn Independent", to expose the Jews. He hired a staff of experts on the Jewish menace headed by William J. Cameron. Ford spent millions investigating every aspect of the Jew and his activities. In 1922 All this information was combined into book form in four volumns under the title "The International Jew". Now, for the first time in 40 years we will reproduce in serial form the entire Ford report on the Jews. This material is so rare that we have been offered up to $200 for our copy of the Ford report. At one time "The International Jew" was on sale at every local Ford Dealers showroom. Long since out of print and destroyed by the Jews, you will want to save this valuable material and order extra copies for your friends.

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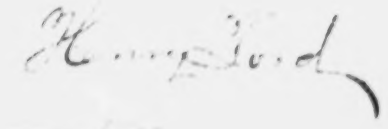
By Henry Ford FOUNDER - FIRST PRESIDENT OF THE FORD MOTOR COMPANY

HE FEARED NO MAN



ney penetrated when once they came here is indicated by the fact that the first white child born in Georgia was a Jew—Isaac Minis. The Jew's presence round the earth, his clannishness with his own people, made him a nation scattered among the nations, a corporation with agents everywhere.

Another talent, however, contributed greatly to his rise in financial power—his ability to invent new devices for doing business. Until the Jew was pitted against the world, business was very crudely done. And when we trace the origins of many of the business methods which simplify and facilitate trade today, more likely than not we find a Jewish name at the end of the clue. Many of the indispensable instruments of credit and exchange were thought out by Jewish merchants, not only for use between themselves, but to check and hold the Gentiles with whom they dealt. The oldest bill of exchange extant was drawn by a Jew—one Simon Rubens. The promissory note was a Jewish invention, as was also the check "payable to bearer."

An interesting bit of history attaches to the "payable to bearer" instrument. The Jews' enemies were always stripping them of their last ounce of wealth, yet strangely, the Jews recovered very quickly and were soon rich again. How this sudden recovery from looting and poverty? Their assets were concealed under "bearer" and so a goodly portion was always saved. In an age when it was lawful for any pirate to seize goods consigned to Jews, the Jews were able to protect themselves by consigning goods on policies that bore no names.

The influence of the Jew was to center business around goods instead of persons. Previously all claims had been against persons; the Jew knew that the goods were more reliable than the persons with whom he dealt, and so he contrived to have claims laid against goods. Besides, this device enabled him to keep himself out of sight as much as possible. This introduced an element of hardness into business, inasmuch as it was goods which were being dealt in rather than men being dealt with, and this hardness remains. Another financial device which survives and which is of advantage in veiling the very large control which Jews have attained, is of the same origin as "bearer" bills. It permits a business dominated by Jewish capital to appear under a name that gives no hint of Jewish control.

The Jew is the only and original international capitalist, but as a rule he prefers not to emblazon that fact upon the skies; he prefers to use Gentile banks and trust companies as his agents and instruments. The suggestive term "Gentile front" often appears in connection with this practice.

The invention of the stock exchange is also credited to Jewish financial talent. In Berlin, Paris, London, Frankfort and Hamburg, Jews were in control of the first stock exchanges, while Venice and Genoa were openly referred to in the talk of the day as "Jew cities" where great trading and banking facilities might be found. The Bank of England was established upon the counsel and assistance of Jewish emigrants from Holland. The Bank of Amsterdam and the Bank of Hamburg both arose through Jewish influence.

There is a curious fact to be noted in connection with the persecution and consequent wanderings of the Jews about Europe and that is: wherever they wandered, the center of business seemed to go with them. When the Jews were free in Spain, there was the world's gold center. When Spain drove out the Jews, Spain lost financial leadership and has never regained it. Students of the economic history of Europe have always been puzzled to discover why the center of trade should have shifted from Spain, Portugal and Italy, up to the northern countries of Holland, Germany and England. They have sought for the cause in many things, but none has proved completely explanatory. When, however, it is known that the change was coincident with the expulsion of the Jews from the South and their flight to the North, when it is known that upon the Jews' arrival the northern countries began a commercial life which has flourished until our day, the explanation does not seem difficult. Time and again it has proved to be the fact that when the Jews were forced to move, the center of the world's precious metals moved with them.

This distribution of the Jews over Europe and the world, each Jewish community linked in a fellowship of blood, faith and suffering with every other group, made it possible for the Jew to be international to the sense that no other race or group of merchants could be at that time. Not only were they everywhere (America and Eurasia are everywhere to-day) but they were organized before [illegible] commercial organization. [illegible] was known to every writer in the Middle Ages that the Jews knew more of what was happening in Europe than the governments did. They had better knowledge [illegible] than the rulers did. The information [illegible] group to group, [illegible] and they may be said [illegible] cultivate the friendship of the Gentile masses, due perhaps to the failures of experience, but due more likely to his inborn persuasion that he belongs to a superior race. Whatever the true reason, he has always placed his main dependence on cultivating friendship with kings and nobles. What cared the Jew if the people gnashed their teeth against him, so long as the king and the court were his friends? Thus there was always, even through most of the severely trying times, "a court Jew," one who had bought by loans and held by the strangle-hold of debt an entrance to the king's chamber. The policy of the Jews has always been to "go to headquarters." They never tried to placate the Russian people, but they did endeavor to enlist the Russian court. They never tried to placate the German people, but they did succeed in permeating the German court. In England they shrug their shoulders at the outspoken anti-Jew reactions of the British populace—what care they? Have they not all of lorddom at their heels, do they not hold the strings of Britain's purse?

Through this ability of theirs to "go to headquarters" it is possible to account for the stronghold they got upon various governments and nations. Added to this ability was, of course, the ability to produce what the governments wanted. If a government wanted a loan, the Jew at court could arrange it through Jews at other financial centers and political capitals. If one government wanted to pay another government a debt without risking the precious metal to a mule train through a robber-infested country, the Jew at court arranged that too. He transferred a piece of paper and the debt was paid by the banking house at the foreign capital. The first time an army was ever fed in the modern commissary way, it was done by a Jew—he had the capital and he had the system; moreover he had the delight of having a nation for his customer.

And this tendency, which served the race so well throughout the troublous centuries, shows no sign of abatement. Certainly, seeing to what an extent a race numerically so unimportant influences the various governments of the world today, the Jew who reflects upon the disparity between his people's numbers and their power may be pardoned if he sees in that fact a proof of their racial superiority.

It may be said also that Jewish inventiveness in business devices continues to the present time, as well as Jewish adaptability to changing conditions. The Jew is credited with being the first to establish branch houses in foreign countries in order that responsible representatives of the home office might be on the ground taking instant advantage of every opening. During the war a great deal was said about the "peaceful penetration" which the "German Government" had effected in the United States by establishing here branch offices and factories of German firms. The fact that there were many German branch houses here is unquestionable. It should be known, however, that they were not the evidence of German enterprise but of Jewish enterprise. The old German business houses were too conservative to "run after customers" even in the hustling United States, but the Jewish firms were not, and they came straight to America and hustled. In due time the competition forced the more conservative German firms to follow suit. But the idea was Jewish in its origin, not German.

Another modern business method whose origin is credited to Jewish financiers is that by which related industries are brought together, as for example, if an electrical power company is acquired, then the street railway company using the electricity would be acquired too, one purpose being in this way to conserve all the profit accruing along the line, from the origination of the power down to the delivery of the street car ride; but perhaps the main purpose being that, by the control of the power house the price of current could be increased to the car company, and by the control of the car company the cost of a ride could be increased to the public, the controllers thus receiving an additional profit all down the line. There is much of this going on in the world today, and in the United States particularly. The portion of the business immediately next to the ultimate consumer explains that its costs have risen, but it does not explain that the costs were increased by the owners and not by outsiders who were forced to do so by economic pressure.

There is apparently in the world today a central financial force which is playing a vast and closely organized game, with the world for its table and universal control for its stakes. The people of civilized countries have lost all confidence in the explanation that "economic conditions" are responsible for all the changes that occur. Under the camouflage of "economic law" a great many phenomena have been accounted for which were not due to any law whatever except the law of the selfish human will as operated by a few men who have the purpose and the power to work on a wide scale with nations as their vassals.

Whatever else may be national, no one today believes that finance is national. Finance is international. Nobody today believes that international

(continued next page)

[fol. 19]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION

COMPLAINANT'S EXHIBIT 1

[fol. 20] Mr. Parsons: Mr. Misso. Officer Misso.
The Court: All right, sir.

Mr. Philip L. Misso having been called as a witness on behalf of the Complainant herein, and having been first duly sworn according to law, was thereupon examined and testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mr. Misso.
A. Yes, sir.
Q. Give us your full name and address, please.
A. Philip Misso, Philip L. Misso. I live at 1609 57th Street, the City of Birmingham.
Q. And by whom are you employed and in what capacity, please.
A. City of Fairfield, Alabama; patrolman.
Q. I see.
Last night, October 11, at about 7:30 or a quarter till eight, were you on duty in Fairfield?
A. Yes, sir; I was.
Q. And where were you on duty at that time, please.
A. In the 5300 Block of Valley Road.
Q. Did you see either one of these parties, Edward R. Fields or Robert Ellsworth Lyons at that time?
A. Yes, sir, I did.
Q. Which one did you see?
A. I saw both. Both of them. Both of the gentlemen.
Q. I see.
Will you tell us what transpired at that time?
A. I heard someone call for an officer and I crossed the street and Mayor Smithson was over there and Mr. Lyons was there. He was distributing these handbills. I arrested Mr. Lyons; took him across the street and put him in the patrol wagon.
Q. Is that the handbill that you speak of?
A. Yes, sir. This is the Thunderbolt.

[fol. 21] Q. The Thunderbolt?

A. Yes.

Q. That it?

A. Yes.

Q. All right.

Did you hear any conversation between Mr. Lyons and the people around him there?

A. No, sir.

Q. You did not?

A. I did not.

Q. Did not hear any conversation?

A. No, sir.

Q. You just saw him handing out those?

A. Yes, sir.

Mr. Parsons: That's all.

The Court: Answer Mr. Stoner's questions.

A. Yes, sir.

Cross examination.

By Mr. Stoner:

Q. Did you by any chance search any automobiles there at the scene of the arrest?

A. Not at this time. I didn't. No, sir. I did earlier in the afternoon.

Q. You did earlier in the afternoon?

A. Yes, sir.

Q. I see.

Have you read this copy of the Thunderbolt, this Thunderbolt here?

A. No, sir. I have not.

Q. You don't know whether there is, whether it is any invitation to that, to any meeting—you don't know if there is any invitation to any meeting last night in here or not, then?

A. I have read it since last night.

Q. Well, is there anything about a meeting in Fairfield in it? In that?

A. I didn't see anything.

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[fol. 22] Q. There was no attempt to hold a meeting in Fairfield, was it? By these two defendants?

A. I don't—I couldn't testify as to that. They were in the presence—

Q. You didn't see them holding a meeting, did you?

A. There was no meeting held. They were there.

Q. And they did route people to the other meeting place?

A. I didn't hear them inviting them.

Q. You didn't hear anything like that?

A. No.

Q. You just called them when they told you to make an arrest?

A. Yes, sir.

Q. Who told you to make the arrest?

A. Mayor Smithson was across the street and I went over and arrested Mr. Lyons.

Q. On what charge did he tell you to arrest him?

A. Contempt of court. By reading this—I had read this injunction myself.

Q. Yes, sir.

And Mayor Smithson told you to arrest him?

A. Yes, sir.

Q. On the charge of contempt of court?

A. He told me to arrest him.

Q. I see.

This the only leaflet you saw out there last night in the hands of either one of these gentlemen here or Dr. Fields or Mr. Lyons?

Is that correct?

A. That is the only one I saw last night.

Q. I see.

All right. Thank you.

Mr. Stoner: That's all.

(Witness excused.)

The Court: All right, sir.

Let me see Exhibit 1.

(Court Examines Complainant Exhibit 1.)

[fol. 23] Mr. Stoner: If I may—

The Court: Yes, sir.

Mr. Stoner: If I may interrupt, your Honor.

The Court: All right.

Mr. Stoner: There is nothing, your Honor, in the Thunderbolt about any meeting in Fairfield.

The Court: It is in evidence, Mr. Stoner. It speaks for itself.

Mr. Stoner: Yes, sir.

The Court: All right, sir.

Call your next witness, Mr. Parsons.

Mr. Parsons: Mr. Morris. Chief Morris.

[fol. 24] Mr. Clyde Morris called as a witness on behalf of the Complainant herein, and having been first duly sworn according to law, was thereupon examined and testified as follows:

Direct examination.

By Mr. Parsons:

Q. Chief, will you give us your name and address, please, sir?

A. Clyde Morris, Chief Officer, Bessemer, Chief Deputy in charge of the Bessemer Division of Jefferson County.

Q. Chief, will you tell— Were you over in the 5300 block of Gary Avenue in Fairfield yesterday evening around seven-thirty or a quarter of eight?

A. Yes, sir.

Q. Did you at that time see— Well, let me ask you this, first:

Prior to that time, had you seen or talked to either one of these parties, Edward R. Fields or Robert Ellsworth Vines?

A. Yes, sir.

I served an injunction on Mr. Fields at 415 41st Street, Ensley, yesterday, about ten minutes until twelve.

Q. Yes, sir.

Did you have any conversation with him at that time?

A. Yes, sir.

Q. You did?

A. I did.

Q. Will you tell us what was said?

A. Yes, sir.

He said: "What's this for?"

I said: "It's an injunction against a meeting in Fairfield, tonight."

"What if I decide to have one?" He said.

I said, "Well, come on out and see what will happen."

And, I said, "and that's a good way of breaking in jail."

And so he kept on following me out there and talking and I told him:

"Don't just keep talking. Just talk to the telephone post out there; you'll get more information out of that than [fol. 25] you would out of me."

By Mr. Parsons, continuing:

Q. All right.

Did you see him again before seven-thirty?

A. No.

Not until they brought him over to the wagon.

Q. Then you did— Will you tell us what transpired then about seven-thirty, that evening?

A. Yes.

When he brought him over I told him:

"Didn't I tell you to stay out of Fairfield?"

He said: "Yes. You told me that."

And he said: "All I'm doing is directing them over to Lipscomb."

Q. Did you see what they were doing before they were brought over there?

A. They were congregating across—congregated across the street, milling around; a fairly good crowd.

Q. Were they over there in the crowd across the street?

A. I am sure they was. I didn't see them, recognize them, over there but they did bring them from across the street.

Q. I see.

Brought them over, brought them from the crowd across, over there?

A. Yes.

Q. A crowd had congregated across the street from the meeting place, the proposed meeting place?

A. Yes.

Q. I see.

All right.

Mr. Parsons: Your witness.

Cross examination.

By Mr. Stoner:

Q. Chief, do you find anything in the injunction that said that Dr. Fields and Mr. Lyons couldn't come into the City of Fairfield, last night?

A. That is up to the Judge to determine about that.

[fol. 26] Q. Well, you made the statement to Dr. Fields, you told Dr. Fields, you made the statement to Dr. Fields that he should stay out of Fairfield?

A. I did tell Dr. Fields that; yes.

We didn't want any trouble over there. We try to keep down trouble in this Cut-off. We don't want these people coming in here creating any trouble in our county. We're not—

Mr. Stoner: Your Honor, I object to him expressing all these kind of opinions.

The Court: Yes, sir.

Don't volunteer, Chief Morris.

A. All right, sir.

By Mr. Stoner, continuing:

Q. You said, you admit that you told him to stay out of Fairfield?

A. Yes, sir.

Q. Do you think that you had a right to tell an American citizen that he can't come into Fairfield?

Mr. Parsons: We object to that, your Honor. We object.

The Court: You don't have to answer that, Chief Morris. That is an improper question, Mr. Stoner.

Mr. Stoner: It seems to me that it's violating his Constitutional rights. Excuse me, your Honor.

By Mr. Stoner, continuing:

Q. How many police officers were at the scene there last night?

A. I don't know. I didn't count them.

Q. How many of your officers were there?

A. I imagine there was 12 or 15.

Q. And were any police officers there from the City of Birmingham?

A. I couldn't answer that.

Q. Did you see any F.B.I. agents there?

A. I did not.

Q. You did not.

Did you see any leaflet passed out by Dr. Fields or Mr. Lyons other than this Thunderbolt?

A. No, sir.

[fol. 27] Q. Did you hear what they were telling other people that came up?

A. I heard what they told me when they came across the street.

That's all I heard. I can't testify to what happened across the street because I wasn't over there.

Q. I just wanted to know what you actually heard.

What did they tell you when they came across the street?

A. They said they were over there to ask the people to go on to Lipscomb and they were trying to get the crowd over to Lipscomb.

Q. They told you, then, that they— They didn't say anything to you to indicate that they were trying to violate the ordinance?

A. I would think so because they knew they didn't have any business in Fairfield last night.

Q. That's all.

Thank you.

The Court: Anything further, Mr. Parsons, from this witness?

Mr. Parsons: I don't believe so, your Honor.

The Court: All right, Chief. You may stand aside.

(Witness excused.)

[fol. 28] CHARLES L. WOOD having been called as a witness on behalf of the Complainant herein, and having been first duly sworn according to law, was thereupon examined and testified as follows:

Direct examination.

By Mr. Parsons:

Q. Have you given your name and address, Mr. Lyons?
A. Wood.
Q. I mean, Mr. Wood?
A. No.
Q. Would you tell the court your name and—your full name and your address, please, sir?
A. Charles L. Wood. I live at 209 7th Street, Fairfield Highlands.
Q. By whom are you employed and what capacity, please, sir?
A. I am employed by the City of Fairfield as a police officer.
Q. Were you on duty in Fairfield around seven-thirty last night?
A. Yes, I was.
Q. And what place were you on duty at that time?
A. At that time I was in the 5300 block of Valley Road.
Q. Did you see any of these people—any of these pieces of literature here at that time?
A. Yes, sir; I did.
Q. Will you tell us the circumstances?
A. Yes, sir.
Well, I heard a commotion across the street. I started over there and I saw this gentleman here being brought over by two officers.
Q. Which gentleman?
A. Him. (indicating)
Q. The first gentleman?
A. The first one here.
Q. Nearest to you?
A. Sir?
Q. The one nearest to you?
A. Yes, sir.

Henry Ford (continued)

nance is in any way competitive. There are some ndependent banking houses, but few strong independnt ones. The great masters, the few whose minds e clearly the entire play of the plan, control numerus banking houses and trust companies, and one is sed for this while another is used for that, but there s no disharmony between them, no correction of each ther's methods, no competition in the interests of the usiness world. There is as much unity of policy beween the principal banking houses of every country s there is between the various branches of the United States Post Office—and for the same reason, namely, hey are all operated from the same source and for the ame purpose.

Just before the war Germany bought very heavily n American cotton and had huge quantities of it tied ap here for export. When war came, the ownership of that mountainous mass of cotton wealth changed n one night from Jewish names in Hamburg to Jewish names in London. At this writing cotton is selling in England for less than it is selling in the United States, and the effect of that is to lower the American price. When the price lowers sufficiently, the market is cleared of cotton by buyers previously prepared, and then the price soars to high figures again. In the meantime, the same powers that have engineered the apparently causeless strengthening and weakening of the cotton market, have seized upon stricken Germany to be the sweatshop of the world. Certain groups control the cotton, lend it to Germany to be manufactured, leave a pittance of it there in payment for the labor that was used, and then profiteer the length and breadth of the world on the lie that "cotton is scarce." And when, tracing all these antisocial and colossally unfair methods to their source, it is found that the responsible parties all have a common characteristic, is it any wonder that the warning which comes across the sea—"Wait until America becomes awake to the Jew!"—has a new meaning?

Certainly, economic reasons no longer explain the condition in which the world finds itself today. Neither does the ordinary explanation of "the heartlessness of capital." Capital has endeavored as never before to meet the demands of labor, and labor has gone to extremes in leading capital to new concessions—but what has it advantaged either of them? Labor has heretofore thought that capital was the sky over it, and it made the sky yield, but behold, there was yet an higher sky which neither capital nor labor had seen in their struggles one with another. That sky is so far unyielding.

That which we call capital here in America is usually money used in production, and we mistakenly refer to the manufacturer, the manager of work, the provider of tools and jobs—we refer to him as the "capitalist." Oh, no. He is not the capitalist in the real sense. Why, he himself must go to capitalists for the money with which to finance his plans. There is a power yet above him—a power which treats him far more callously and holds him in a more ruthless hand than he would ever dare display to labor. That, indeed, is one of the tragedies of these times, that "labor" and "capital" are fighting each other, when the conditions against which each one of them protests, and from which each one of them suffers, is not within their power to remedy at all, unless they find a way to wrest world control from that group of international financiers who create and control both these conditions.

There is a super-capitalism which is supported wholly by the fiction that gold is wealth. There is a super-government which is allied to no government, which is free from them all, and yet which has its hand in them all. There is a race, a part of humanity, which has never yet been received as a welcome part, and which has succeeded in raising itself to a power that the proudest Gentile race has never claimed—not even Rome in the days of her proudest power. It is becoming more and more the conviction of men all over the world that the labor question, the wage question, the land question cannot be settled until first of all this matter of an international super-capitalistic government is settled.

"To the victor belongs the spoils" is an old saying. And in a sense it is true that if all this power of control has been gained and held by a few men of a long-despised race, then either they are super-men whom it is powerless to resist, or they are ordinary men whom the rest of the world has permitted to obtain an undue and unsafe degree of power. Unless the Jews are super-men, the Gentiles will have themselves to blame for what has transpired, and they can look for rectification in a new scrutiny of the situation and a candid examination of the experiences of other countries.

... of May 22 1938

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New Orleans Meeting Success

N.S.R.P. Ceremony

On Friday September 8, 1961, at 3:00 P.M. 2 representatives of the National States Rights Party, Mr. Roy James Leahart and Mr Albert Joseph Belsom picketed the Orleans Parish School Board office at 703 Carrodelet St. N.O. La., calling on the school board to resign.

The La. Legislature has addressed this board out of office a number of times and only the cold steel of the Federal bayonet holds them in power.

The New Orleans Police department represented by 2 officers of the so called phoney "Inteligence Division", made it plain about 30 minutes after they started that they would be arrested if they didn't stop. Faced with arrest for exercising their constitutional rights they had to stop. The high school situated next door reportedly detained its pupils for 30 minutes to avoid their being let out in the middle of the picket line.

This story was mentioned on W.D.S.U. TV and pictures of the picketing were on W.W.L., TV in New Orleans.

After leaving the scene, Mr. Leahart and Mr. Belsom went to Police Hq. to protest to the Supt. of Police Mr. Joseph Giarrusso, their not being able to exercise their constitutional rights. The Supt. was not in and Intelligence (Sic) Capt. Trasclair told them that their rights were not valid during the integration crisis. Mr. Leahart informed the police that just as Gov. Faubus of Arkansas said a few days earlier that the people of Hungary may still live under Communism but that didn't mean they liked it.

We may live under integration but we will never like it.

The "Times Picaune" which always prints every little detail about integration activities and points out every angle of their side, never gave this activity on behalf of the white race a mention.

The New Orleans members of the La. NSRP will continue to resist integration knowing full well that their resistance is part of a gigantic struggle to save all white Americans from mongrelization.

Anyone in La. and especially the New Orleans area who wants to do something to help save their race and nation should contact the La. NSRP at Box 4342 New Orleans 18, La. for Race - Nation - Faith

Signed

R.J. Leahart, Secy.

The NSRP also distributed 100 Thunderbolts around each of 6 schools that were to be integrated. The work was done house to house on Labor Day.

Frankhouser Speaks

Whiteman's Monument

Portrait Of A Leader

IRVING THACKER

g Thacker was born in Hindman Ky. 1903, his parents were of the Christian Faith and were decendants of the early settlers of Old Virginia. Attended public schools and taught one year of Elementary school at the early age of 18 years. Ended his teaching career early and entered the Armed Forces (US Army) was Honorably Discharged after 3 years service. Then worked as salesman and collector for many years in Kansas City, Mo.

Moved to Ohio in 1946, where he has lived and worked ever since. Has been active in numerous Patroitic organizations such as The Constitution Society of Ohio, etc. An active member of the Junior Order United American Mechanics at present Treasurer of the Dayton Council. Over the past years has held numerous state and local offices in the Jr. O.U.A.M.

Dissatified with the leadership of the republican Party after the death of Sen. Robert A. Taft, And finding the Democrat party leading us into Socialism, Mr. Thacker could not support either major party. The Black Monday Supreme Court decision of 1954 completely destroyed his faith in either the Democrat or Republican parties for I knew either of them could have enf... this Court and caused the Court not to render the unconstitutional decision.

Seeing the need for a new Political party and finding the NSRP to his liking he joined in March 1959.

In School my favorite subject was history, he is proud of our forefathers who struggled against unsurmountable odds to build this Great nation of ours. Mr. Thacker says "Now approximately 175 years from the time our Constitution was put into effect, we find ourselves governed by Officials, Who are so weak as to succumb to the threat of any Minority at home or abroad. Unless we build a new Political Party and elect men and women to leadership with the faith and vision of our forefathers our Country is doomed and our grandchildren will live under Communism."

(Irving Thacker, Soldier, Businessman, Educator, and Patriot, the New Leader need Out to Rebuild a Nation.)

The Ohio Branch of National States Rights Party meets regularly in Dayton, Ohio. All Ohio supporters should find out how they can help by writing National States Rights Party Ohio Unit, Box 42, Walnut St. Sta., Dayton 2, Ohio.

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[fol. 29] (Indicating Dr. Fields)

The Court: Let the record show he pointed to Fields.

By Mr. Parsons, continuing:

Q. At that time what—

A. At that time I went across the road, Valley Road, over into the parking lot and two other officers had Mr. Lyons. They were taking him across the road. Sergeant Bishop and I started looking through the cars for anything we could find, pamphlets or magazines and what have you, and we ran across a white '59 Ford with these Thunderbolts in it. There were at least a hundred or more. I never did count them.

I know there was quite a few of them in the car.

I was instructed to check the car, by Sergeant Bishop.

Q. Did you find anything else besides the Thunderbolts in the car?

A. Yes. Yes, sir.

Q. All right.

A. I found four shotgun shells in the glove compartment.

Q. Would you—

A. One of these shells—

Mr. Stoner: Your Honor. I object to that. That is irrelevant, incompetent, immaterial for this—

The Court: Over-ruled.

By Mr. Parsons, continuing:

Q. I think this—I show you these—

A. One of the shells was a rifle slug; the other three were normal, regular shotgun shells. I have them in this envelope here I turned over to the clerk on the desk. The shells are in the envelope and sealed—he sealed them in the envelope.

Q. Will you identify those as being the—

A. I put a mark on each one, a check mark on these shells.

Q. One on each one of these?

A. Yes, sir.

Q. This is the rifle slug—

A. This is the rifle slug I found in the car. We searched the car; the front seat and couldn't find anything else other than that.

Q. What kind of shot, of shells are those, can you tell?

A. I don't know, sir; this is a number 8 Buck, but I don't know what these are. These two. This is a rifle slug here. (indicating)

[fol. 30] Mr. Parsons: We introduce those into evidence, your Honor, and offer them into evidence as City's Exhibits 2, 3, 4, and 5.

The Court: All right, sir.

(There having been no objection, the items referred to, having been marked as Complainant's Exhibits Numbers 2, 3, 4, and 5, respectively, for identification, were then received in evidence as Complainant's Exhibits 2, 3, 4, and 5 respectively, and made a part of this record. Their nature being such that they cannot be copied into this report of proceedings, the said exhibits will be forwarded by the clerk of this court to whichever court appeal may be taken.)

By Mr. Parsons, continuing:

Q. Did you see Dr. Fields then—did you see Dr. Fields do anything at that time?

A. No, sir; I didn't.

Q. You just saw him there. You didn't see him do anything?

A. No, sir. I saw him there but I hadn't seen him do anything.

Q. All right.

Answer this gentleman's questions.

Cross examination.

By Mr. Stoner:

Q. Were you standing in front of the car wash place right on the sidewalk in front of it when you first saw Dr. Fields?

A. I was on the sidewalk but I was just a little off from the building; I wasn't directly in front.

Q. You were on the same side of the street as the car wash?

A. That's right.

Q. You saw Dr. Fields being brought across the street from the other side, is that correct?

A. Yes, sir.

[fol. 31] Q. I see.

When you went to Dr. Fields' car, was anyone in his car?

A. No, sir. Not when I got there.

No, sir.

Q. Did you have a search warrant to search it with?

A. No, sir.

Q. Did you take those Thunderbolts because you considered them to be illegal?

A. Yes, sir.

Q. What about the shotgun shells?

Why did you take them?

A. The rifle slug in Alabama is illegal.

Q. Now these other shotgun shells that are colored red—they are not illegal, are they?

A. No, sir.

Q. What color is the shotgun shell that has the—that apparently has the rifle slug in it?

A. Green.

Q. Green. It's green.

A. It's green? Yes, sir. Green.

Q. And the others are all red?

A. Yes.

Q. That right?

A. Yes. That's right.

Q. Where in the car did you find them?

A. All in the glove compartment.

Q. Did you find any kind of a gun?

A. No, sir; I did not.

Q. Did you see Dr. Fields passing out any copies of any publication or literature or leaflet?

A. No, sir. I didn't.

Q. Did you hear him saying anything to anyone standing around?

A. Not to my recollection. No, sir.

Q. Where are all the Thunderbolts that you took out of his car now?

A. Turned into the office. They are still in the office at the, in the City Jail.

[fol. 32] Mr. Stoner: That's all. Thank you sir.
The Court: Anything further from this witness?
Mr. Stoner: No, sir.
Mr. Parsons: I believe no.
The Court: All right.
You may stand aside.

(Witness excused.)

Mr. Parsons: Your Honor, I would like to recall Officer Misso.
The Court: All right.

Philip L. Misso having been previously sworn as a witness on behalf of the complainant herein was recalled for further examination and was examined and testified further as follows:

Further direct examination.

By Mr. Parsons:

The Court: You are still under oath, Mr. Misso, from your previous testimony. Have a seat.

A. Yes, sir.

By Mr. Parsons:

Q. Mr. Misso, had you looked into this matter—had anything to do with this matter earlier in the evening?
A. Yes, sir; I did.
Q. In the course of your activities, did you notice the car of Dr. Fields?
A. Yes, sir.
Q. Did you notice anything that—
Will you tell us what you saw in that car?
A. Yes, sir.
Approximately one-thirty yesterday afternoon I relieved our two detectives down at the car wash in the City of Fairfield in the 5300 Block of Valley Road, and I was watching the door that goes to the upstairs part of McGregor's Car Wash when a gentleman who identified himself to me as Dr. Fields and this—
[fol. 33] Q. Is he here?

A. Yes, sir.
Q. In here?
A. Yes.
Q. All right.
A. And Mr. Lyons.

At that time, Mr. Lyons did not say who he was and another gentleman, a black-headed white man. And they wanted to go into the building.

I told them that they couldn't go into the building; that there was an injunction against them and he—Dr. Fields—instructed this other gentleman, whom I don't see in court, to go across the street and bring a flag and he brought the flag and a shotgun that was wrapped up. I asked him what it was and he said it was a shot gun.

And said that the other gentleman had stayed in the building the night before and needed the shotgun for protection.

Q. I see.

What kind of car was this Dr. Fields in?

A. It was a white 1959 Ford.

Mr. Parsons: I believe that is all. You can examine.

Further cross examination.

By Mr. Stoner:

Q. Have you read the injunction?
A. Why, yes, sir, I read the injunction.
Q. Did you find anywhere where it said that Dr. Fields or anyone else couldn't go into the building during the day yesterday?
A. The building was pad-locked and the injunction was on the door. My orders were to keep everybody out.
Q. Did you discuss this situation yesterday any time with Mayor Smithson?
A. No, sir. Personally, I did not; no, sir.
Q. Who did you receive your orders from?
A. The Chief of Police.

Mr. Stoner: That's all; thank you.
The Court: All right, sir.

(Witness excused.)

[fol. 34] Mr. Parsons: The City will recall Mr. Wood.
The Court: All right, sir.

CHARLES L. WOOD having been previously sworn as a witness on behalf of the complainant herein was recalled for further examination and was examined and testified further as follows:

Further direct examination.

By Mr. Parsons:

Q. Mr. Wood—

The Court: You are still under oath from your previous testimony, Mr. Wood.

A. Yes, sir.

By Mr. Parsons:

Q. Mr. Wood, will you tell us what type of or describe the automobile that you found these shot gun shells in, please, sir?

A. It was a 1959 Ford, four door; it was white; a four door.

Q. All right, sir.

Mr. Parsons: That's all I wanted to ask him.
The Court: All right, sir.
Mr. Stoner?
Mr. Stoner: Yes, sir.

Further cross examination.

By Mr. Stoner:

Q. Do you know the address of McGregor's Car Wash?

A. I am not sure of it, but I believe I do. I don't know, I don't recall ever seeing a—

Q. Do you know if it's the same address as specified in the injunction here?

A. The only address that I have ever seen on the building was 5329. I have never noticed any other number on it since I have been working for the City.

Q. Did you by any chance—can you by any chance recall if the correct address of that building is 5327½?

A. No, sir. I've never seen it. I never seen the address other than 5329 on the building.

[fol. 35] Mr. Stoner: That's all.

Thank you.

Mr. Parsons: All right, sir.

The Court: All right. You may stand aside, Mr. Wood. You are excused.

(Witness excused.)

Mr. Parsons: That's the City's case, your Honor.

The Court: All right, sir.

Anything for the Respondents, Mr. Stoner?

Mr. Stoner: Your Honor, if they are not going to call the Mayor I would like to call him as a hostile witness.

The Court: You may call him but you leave yourself open. You take him as your witness.

Mr. Stoner: I can't treat him as a hostile witness and cross-examine him?

The Court: You can announce that and I will give you some latitude in your examination of him but he is still your witness.

Mr. Stoner: All right.

I would like to call Mayor Smithson.

The Court: All right.

[fol. 36] Mayor Claude Smithson called as a witness on behalf of the Respondents herein, having been first duly sworn, according to law, was thereupon examined and testified as follows:

Examination.

By Mr. Stoner:

Q. Mayor Smithson, have you ever had any dealings with Dr. Fields, who is sitting right here?

A. Yes.

Q. Could you tell us what that business was about?

A. Yes. I can tell you what it was about.

Q. Did he ask you to give him a permit to hold a meeting in Fairfield?

A. He didn't ask me. He wanted to know if I was going to give him one.

Q. What was your answer?

A. Well, before I give that, I want to—I would want to state—I want to state what transpired before it.

Q. Very well.

Go ahead.

A. Dr. Fields called me. Let's see—today is Thursday—Wednesday—Tuesday—Tuesday evening at my residence, about six o'clock in the evening, and told me who he was and he wanted to know if he was going to be allowed to have a meeting in Fairfield.

And I told him that I didn't care to discuss this matter over the telephone and if he would come to my office I would be glad to discuss the matter with him.

He told me that he didn't have time to come to my office.

He says: "I want to know if you're going to let me have that meeting in Fairfield."

He said, "let me tell you this", he said. "If you don't", he says, "you'll never be mayor of Fairfield again because I'll see to it", he says, "that you are never the Mayor of Fairfield, and", he says, "I'll smear your name all over the State of Alabama."

And I said, "Now, Mr. Fields, let me tell you one thing," I says, "you or nobody else is going to intimidate Claude [fol. 37] Smithson", and I said, "don't you attempt it."

And I said, "especially over the telephone."

That's the best I remember I told him.

Well, from that, I—well, I couldn't—I wouldn't attempt to say in this court room all that he—

Q. Had you had any conversations with him before that time?

A. No, sir.

But I wouldn't attempt to say what he—it's not my policy to say the—

Q. Now, I didn't ask you what your policy is.

A. Now, you asked me a question, to tell you about my conversation and I want to finish it.

Q. All right.

A. If it pleases the court.

The Court: All right.

Go ahead and finish it.

A. I wouldn't attempt to say all that this fellow said over the telephone in this court room but it was every vile thing that almost a person could think of in just a few minutes and then he slammed the receiver up in my face, in my ear, at least; and during this conversation of all these vile things he said:

"I'll tell you this", he said. "I'll have that meeting in Fairfield and, damn it, you can't stop me."

By Mr. Stoner, continuing:

Q. Was that before the injunction was issued?

A. Yes.

And I said, "Well, you won't have the meeting in Fairfield."

Q. All right.

And by what authority did you—

A. And then— Now, you wait. You wait. Just a minute. Let me get through.

Q. All right. Go ahead.

A. I'll let you know when I'm finished, when I get through talking now.

Q. Very well.

[fol. 38] A. You can sit down, if you want to, because it may take a few minutes.

Q. I'll stand.

The Court: All right, sir. Go ahead.

Mayor, don't have any—let's don't have any colloquy going back and forth.

A. Excuse me, Judge.

The Court: Go ahead and say what was said.

A. Yes, sir.

And in about ten minutes he called me back again, very mild—in a very mild tone. Very nice. And again he said:

"I want to talk to you about this meeting."

And I told him, again, that I didn't care to discuss the matter over the telephone. I said, "If you'll come to my office, I'll be glad to discuss it with you."

And he said, "well". He said, "will it do me any good to come to your office?"

And I said, "my office is open to anyone at any time."

And he said, "Are you going to let me have that meeting?"

And I said, "now, I don't care to discuss this matter with you any more over the telephone."

He said, "Well, I'll tell you this", he said, "I'm going to have the meeting in Fairfield."

And I said, "Well, I've already stated my position on this matter to you."

And I told him that I would see him the next morning and I didn't never see him, Dr. Fields, any more during the morning.

Mr. Stoner, continuing:

Q. Have you finished your narrative?

A. Yes.

Q. Do you have the authority to refuse to allow people to hold meetings in Fairfield?

A. Public meetings?

Mr. Parsons: We object to that. It calls for a legal question. It is a legal question, your Honor.

The Court: I will over-rule the objection. If he knows whether he has the authority.

[fol. 39] Mr. Parsons: We except.

The Court: And it has been delegated to him. You may answer.

A. According to the Code of the City of Fairfield, I have the authority to determine whether a public meeting, whether public meetings are held in Fairfield.

By Mr. Stoner, continuing:

Q. Do you know whether that law is constitutional or not?

Mr. Parsons: Object to that, your Honor. That is a conclusion.

The Court: I sustain the objection to that. On some of these ordinances, even this court doesn't know if they are constitutional or not. That calls for a conclusion of this witness.

Mr. Stoner: Well, the basis, your Honor, if I may say so, is on the legal presumption that every one knows the law, is presumed to know what the law is.

The Court: I don't think anybody in this country, Mr. Stoner, knows now what the Supreme Court of the United States will say about any ordinances in the southern state municipalities.

Mr. Stoner: I agree with your Honor about that.

The Court: All right, sir.

I sustained the objection; you don't have to answer that.

Q. All right, sir.

By Mr. Stoner:

Q. You refused to tell Dr. Fields—you did not tell Dr. Fields that he could have a meeting; did you?

A. When?

Q. When you were—when Dr. Fields and you were talking on the telephone? You never did tell him that he could hold a meeting in Fairfield?

A. No, sir.

Q. Did you?

A. No, sir.

Q. Did you tell him that you were not going to allow any [fol. 40] segregationists or white supremists to hold meetings in the City of Fairfield?

A. I did not.

Q. Have you made any—have you made that kind of a statement to the newspaper men?

A. No, sir.

I have not.

Q. Do you have an ordinance, a city ordinance in Fairfield that prohibits the distribution of literature sent by permit?

A. (to Mr. Parsons) Want me to answer that?

Mr. Parsons: You can go ahead.

By Mr. Stoner:

Q. It's the same as the other question.

Mr. Parsons: You can go ahead and answer it. The Judge over-ruled me before.

The Court: You can answer it.

A. Yes. We have an ordinance. It covers more than a hand bills; more than handbills.

By Mr. Stoner:

Q. Were you directing the Fairfield police last night when they made the arrests?

A. No.

Mr. Parsons: We object to that. It calls for a conclusion of the witness and—

The Court: Over-ruled. He's answered.

Mr. Parsons: Oh.

Mr. Stoner: That's all.

Thank you, sir.

Mr. Parsons: One moment.

The Court: Anything further, Mr. Parsons?

Mr. Parsons: Yes, sir.

The Court: All right, sir.

Examination.

By Mr. Parsons:

Q. Prior to this conversation with Dr. Fields, had you sent him a notice that—

Well, let me ask you this, before that:

Prior to your meeting with Dr. Fields, had there been [fol. 41] some pamphlets distributed around the City of Fairfield announcing a meeting?

A. Yes, sir.

Q. Do you have one of those pamphlets?

A. Yes.

Q. All right.

Mr. Parsons: We would like to introduce that pamphlet as City's Exhibit 6.

The Court: Exhibit 6?
Mr. Parsons: Yes.
The Court: Any objection? Mr. Stoner?
Mr. Stoner: No objection.
The Court: All right.

(Whereupon the document referred to was received in evidence and marked as the Complainant's Exhibit Number 6 and is made a part of this record, said exhibit being in words and figures, as follows, to-wit:

[fol. 42]
IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BESSEMER DIVISION

COMPLAINANT'S EXHIBIT 6

WHITE WORKERS
MEETING

* NIGGERS ARE TAKING OVER UNIONS!
* NIGGERS WANT OUR PARKS AND POOLS!
* NIGGERS DEMAND MIXED SCHOOLS!

Communists in NAACP and in WASHINGTON say
Whites HAVE NO RIGHTS!

The Nigger gets everything he DEMANDS!

White Supremacy CAN be saved!

Whites CAN STOP this second Reconstruction!

Hear Important Speakers from 4 States

Time—8 P.M. Date—Wed. Oct. 11

Place—5329 Valley Road
In Downtown Fairfield, Alabama
ABOVE THE CAR WASH

THUNDERBOLT Mobile Unit Will Be Parked Out Front!

Sponsored by National States Rights Party
Box 783, Birmingham, Alabama

PUBLIC INVITED

Come And Bring Your Friends!

End of Complainant's Exhibit 6.

[fol. 43] By Mr. Parsons, continuing: "

Q. Would you read that pamphlet, please, sir?

A. "White workers meeting; niggers are now taking over our unions; niggers wants our parks and pools; niggers demand mixed schools. Communists and NAACP and Washington say 'Whites have no rights'. The niggers gets everything he demands. White supremacy can be saved. Whites can stop this second reconstruction. Hear important speakers from four states. Time: 8 PM. Date: Wednesday, October 11. Place, 5329 Valley Road in downtown Fairfield, Alabama, above the car wash. Thunderbolt mobile unit will be parked out front. Sponsored by the National States Rights Party. Box 783, Birmingham, Alabama. Public invited. Come and bring your friends."

Q. When did that come to your attention, please, sir?

A. It came to my attention about 3:30 in the evening.

Q. What evening, please, sir?

A. That was Tuesday evening.

Q. Had a permit been issued by the City of Fairfield for the distribution of these pamphlets?

A. No, sir.

Q. Or these leaflets?

A. No, sir.

No permit and no application for one.

Q. Had a permit at that time been issued by the city of Fairfield for holding such a meeting?

A. No.

Q. Had there been an application for such?

A. No.

Q. Now after that was brought to your attention, did you send a written notice to Mr. Fields or Dr. Fields?

A. I had a notice sent to Mr. Fields notifying him to the best of my—I don't have a copy of it—to the best of my knowledge the notice notified him that he had already violated or had violated one of the ordinances of the City of Fairfield and that we had an ordinance—we have an ordinance in regard to public meetings in Fairfield and the best of my knowledge the ordinance was so stated in this and it was carried to him by—in person by a Fairfield officer to Mims Street in Powderly.

[fol. 44] Q. I see.

And that was prior to this first conversation you had with him?

A. Yes, sir.

That was to the best of my knowledge between five and five-thirty whenever it was delivered to him.

Q. Yes.

And, thereafter, when was this conversation that you had?

A. Possibly six-ten in the evening.

Q. All right, sir.

Mr. Parsons: You may ask him.

Re-examination.

By Mr. Stoner:

Q. Mr. Smithson, you quoted this leaflet entitled "White Workers Meeting."

Was that distributed, to your knowledge, at any time, after the injunction was issued in the City of Fairfield?

A. I understand that they were put all over Fairfield at various times. I don't know what time they were distributed. I couldn't say after—I couldn't say positively they were distributed after the injunction.

I wouldn't say that.

Q. Who else did you consult with in deciding to get this injunction?

Mr. Parsons: What was that question, please?

Mr. Stoner: "Whe else he consulted with in deciding to go get this injunction".

Mr. Parsons: "Who else did he consult with"? Object to that. Irrelevant. Immaterial.

Mr. Stoner: He's the Mayor and they have a city council, your Honor.

The Court: Over-rule the objection.

Mr. Parsons: We except.

The Court: You may answer that, if you can.

A. I consulted with the City Attorney, Mr. Frank Parsons, the Chief of Police, Mr. Thomas Ward.

By Mr. Stoner, continuing:

Q. Who is Mr. Frank Parsons, please, sir?

A. Mr. Frank Parsons is the City Attorney of the City of Fairfield.

[fol. 45] Mr. Parsons: That's me. That's me.

Mr. Stoner: Yes, sir.

A. Chief Ward is chief of police.

And Mr. George Farr, city councilman. Mr. W. O. Johnson, city councilman and Mr. W. Finley—I can't think of his initial—he is city councilman.

Q. Yes.

And when did those consultations take place?

A. I refuse to answer that question.

Mr. Parsons: No. We—

A. Is it all right?

Mr. Stoner: Your Honor, I request that you make the witness to—

Mr. Parsons: We object to that as being irrelevant, immaterial, your Honor.

The Court: "When did they take place"?

Mr. Stoner: When did the consultations take place.

Yes, sir.

It is relevant because it has to do with them, about them getting the injunction and I want to ask him a question next to get him to admit that the night before at the same place there was a peaceful meeting and no trouble at all and why would he hold consultations to stop the meeting on Wednesday night when there had been a peaceful segregationists—white supremasists, supremists meeting on Tuesday night.

The Court: I'll sustain the objection to it. I don't think he has to give his reasons.

I'll sustain the objection.

Mr. Stoner: As to the time? Your Honor? As to when he held the consultations?

The Court: I sustain the objection.

Mr. Parsons: I object. We object.

The Court: I sustained the objection.

By Mr. Stoner, continuing:

Q. Are you familiar with the meeting on Tuesday night or the night the States Rights Party at the—up above that [fol. 46] car wash place in Fairfield?

A. Nothing but hearsay.

(To the court.)

Can I insert something here, Judge, to make a statement?

Mr. Parsons: Don't volunteer.

The Court: I wouldn't volunteer any statement, Mr. Smithson.

A. Oh.

By Mr. Stoner, continuing:

Q. Can you tell us who told you that there was any trouble at that meeting?

Mr. Parsons: We object to that. Irrelevant. Immaterial, your Honor. I don't know of any trouble at any meeting that I have heard.

The Court: I'll sustain the objection.

What's the relevancy, Mr. Stoner?

Mr. Stoner: To find out what the—to find out what the basis was for the injunction in the first place, your Honor.

The Court: The basis for the injunction is set out in the bill itself. It is sworn to. It says "they didn't apply for a permit, in violation of that City Ordinance".

Mr. Stoner: That's all.

Thank you.

That's all, unless, Mr. Smithson, he wants to ask you some more questions.

Mr. Parsons: No questions.

(Witness excused.)

[fol. 47] Mr. Stoner: Your Honor, I wish to now place Dr. Fields on the stand.

The Court: All right, sir.

DR. EDWARD R. FIELDS one of the respondents herein, called as a witness in his own behalf and having been first duly sworn, according to law, was thereupon examined and testified as follows:

Direct examination.

By Mr. Stoner:

Q. Please state your name and address, please, sir?
A. Dr. Edward R. Fields. 1509 Mims Street.
Q. Dr. Fields, when did you first hold your first meeting in Fairfield, please?

Mr. Parsons: Object to that. Irrelevant, immaterial, your Honor.
Mr. Stoner: As to the basis for them getting, the basis, your Honor, for them getting an injunction up there?
The Court: I'll over-rule the objection; he may answer that.
Mr. Parsons: Except.

A. We held our first meeting Tuesday night, sir, the night before this meeting on the hand bill.

By Mr. Stoner:

Q. Was there any trouble at that meeting?
A. No.
It was a very peaceable, normal meeting.
Q. Were hand-bills such as this entitled "White Workers Meeting" distributed in Fairfield to advertise the meeting for Wednesday night?
A. They were strewed over a wide area prior to our being served with the injunction.
Q. Were any of these leaflets entitled "White Workers Meeting" distributed after the injunction was served—
A. Absolutely—
Q. —upon you?
A. —not.
Q. Was any meeting held in Fairfield up above that car [fol. 48] wash there in Fairfield?

Did the States Rights party hold any meeting there at all Friday night—I mean Wednesday night?

A. It was Wednesday.

Q. Wednesday?

A. Wednesday night.

Q. Yes.

A. No.

No meeting was held; the meeting was called off and at that location—on that occasion and transferred to the Lipscomb City Park.

Q. Did you talk to Mayor Smithson of Fairfield about getting a permit to hold the Wednesday night meeting?

A. Yes.

The night before the Wednesday night meeting, Tuesday night, a letter was delivered to me by a Fairfield officer. I read the letter.

I had held many letters—many meetings. I was not aware of any city ordinances of any kind. I was surprised that there were such ordinances.

So, after reading the letter, which stated that since we had no permit that his Honor the Mayor said that no meeting could be held.

So I called Mayor Smithson up and I talked to him for several minutes. I asked him if he would—I can't remember everything that was said. We both had a lot to say.

I asked him if he would under any circumstance let us have a meeting and he said "absolutely not."

He would not, under any circumstances, issue us a permit.

Q. And did you use any vile language or curse such as he indicated?

A. I have never in my life used vile language to anyone.

Q. When you went out to Fairfield, Wednesday night, what was your purpose in going there?

Mr. Parsons: We object to that, your Honor. It is calling for a conclusion and—

The Court: Over-ruled. He may answer.

[fol. 49] Mr. Parsons: We accept.

A. We sent, I sent two men to the park in Lipscomb and—

Mr. Parsons: Object. Your Honor, we object to that. It is not responsive to the question. It is not responsive, your Honor.

A. I went there with Mr. Lyons to—for the sole purpose of directing anyone who responded to the handbill before the injunction was issued to go to the Lipscomb City Park and I informed around ten or twelve people to go to Lipscomb for the meeting before I was arrested.

By Mr. Stoner, continuing:

Q. Do you know the correct address of the place in Fairfield where the National States Rights Party planned to hold its meeting Wednesday night?

A. 5327½ Valley Road.

Q. In other words, you are saying that the address specified in the injunction is incorrect?

A. That's right.

Q. After you were served with the injunction, where was it then decided that the meeting would be held?

A. Mayor—the Mayor—Mayor Olney was contacted and he volunteered both the city hall for the meeting or the city park. The park if the City hall is not large enough for the crowd. And that the lights would be turned on when we got out there.

Q. Is that place in Lipscomb?

Is that in any part of the City of—

A. No.

Q. —Fairfield?

A. No. It's not.

Q. What time did you arrive there at the place in Fairfield to direct people to the Lipscomb park?

A. Seven—to the best of my knowledge, exactly seven-thirty. I was arrested almost immediately.

Q. How many police officers were there?

A. At least forty.

Q. Had you been by there earlier in the day?

A. Yes, I had.

Earlier in the day; yes.

[fol. 50] Q. Had the injunction said anything about not going in Fairfield, or not?

A. We had left a care-taker at the hall and I went back by to pick him up and he was waiting on the street and I wanted to take our literature out of the hall and carry it to the new meeting place but I was arrested—I was refused entrance to the hall to pick up the literature by two officers. The gentleman straight back there, on the right side—the other side—the right side of her. Here—I was speaking from the rear. On the right.

Mr. Stoner: Can someone identify who that is?

A. Second from the— The heavy-set gentleman, red-headed gentleman.

Q. What's his name?

A. The one who testified.

Mr. Parsons: Stand up, Mr. Misso.

That the gentleman you are talking about?

Mr. Stoner: Mr. Misso.

Mr. Parsons: Misso, yes.

A. Yes. He was on the door.

Mr. Parsons: All right.

By Mr. Stoner, continuing:

Q. He was—that is Mr. Misso?

A. He was there, on the door, and he told—

Q. What was the other one that—

A. —he told us that this injunction, that under this injunction no one could come, could enter the hall that day to take any literature out for any purpose.

Q. Had you read anything like that in the injunction?

A. No. No. There's nothing in the injunction like that.

Q. On which side of the street were you arrested?

On the same side of the street with the hall or the opposite side?

A. No one could cross the street to the hall and there were some white people standing around on the other side of the street and I was telling all who had come to attend the meeting to go to Lipscomb.

Q. Did you ever at any time last night go on the side of the street where the meeting had originally been scheduled before you were arrested?

A. No.

[fol. 51] Q. When you were arrested, were you carried across the street almost in front of the—

A. —building? Yes.

Q. Building?

A. Yes and placed in the paddy wagon.

Q. Where the car wash—

A. Yes.

Q. —was?

A. Yes.

Q. Dr. Fields, do you know whether or not ordinances such as the two that Mr. Smithson mentioned are constitutional or unconstitutional?

Mr. Parsons: We object to that, Judge. It's a conclusion, your Honor, and the man's not shown that he's qualified.

Mr. Stoner: Every citizen should know what the constitution says, your Honor.

The Court: I don't know that he is— Is he a lawyer?

Mr. Stoner: Well, he's read the Constitution.

The Court: I tell you, I don't know whether you have got a license to practice in Alabama but the Supreme Court of Alabama has held that this identical ordinance constitutional and there is a case going up out of this court that is—

Mr. Stoner: It wasn't heard in the United States Supreme Court then?

The Court: No.

Mr. Stoner: There are many cases it has handed down on both those types of ordinances.

The Court: This witness wouldn't be qualified to state whether or not it is constitutional.

I'll sustain the objection.

By Mr. Stoner:

Q. You didn't have any intention whatever of violating that—this injunction—

A. No.

Q. Did you, Dr. Fields?

[fol. 52] A. No.

That is the—that is why we got the other hall, the other park.

Q. Did you not— You did not actually do one single act in violation of this ordinance, did you?

A. We tried to do everything to avoid violating the ordinance, the injunction.

Q. Is the National States Rights party an organization that stands for law and order?

A. Yes, it is.

We never have had a member convicted of any crime.

Q. Now what are the principles of the National States Rights Party?

Mr. Parsons: We object to that, your Honor. It's irrelevant, immaterial and now we—

The Court: Yes, sir.

I sustain the objection.

By Mr. Stoner, continuing:

Q. What was the purpose of the meeting to be held on Wednesday night, the night you were arrested?

A. The Wednesday night meeting, we were—

Mr. Parsons: We object to that, your Honor, as irrelevant, immaterial.

The Court: I'll over-rule the objection to that, Mr. Parsons.

Mr. Parsons: We except.

The Court: He can answer that.

Go ahead.

By Mr. Stoner, continuing:

Q. Go ahead.

A. The meeting was to be a public meeting to inform the people on a number of subjects. We had four speakers. Mr. Lyons was one of them, who's returned from a trip to London, England, and you had been invited to explain the Kenneth Adams case in Anniston, Alabama, and two other people had been invited and had accepted to speak.

Q. What you told us is who was going to speak; but what was the purpose of the meeting other than that?

A. Well, more or less to acquaint as many of the new people who are not members— It wasn't a membership meeting; it was going to be a public meeting, as to the aim of our organization, the States Rights Party, and to see [fol. 53] if we could possibly recruit new members after the meeting was held.

Q. You intend, as does the National States Rights Party intend, to sponsor candidates for public office in future elections in Alabama?

A. Yes.

Q. Is the National States Rights party for white supremacy and segregation?

A. Yes. It is.

Q. Just a minute. Excuse me, your Honor.

In your conversations with Mayor Smithson, did he tell you that he was not going to allow any segregationist or white supremist meetings in the city of Fairfield?

A. He said that he wouldn't issue a permit for any such organization to hold such a meeting in Fairfield.

Mr. Stoner: That's all, thanks.

Mr. Parsons: That all?

Mr. Stoner: Yes.

Cross examination.

By Mr. Parsons:

Q. He said in such—such an organization as your organization, did he not?

A. "Any such organization" is what he said.

Q. You were speaking, at that time—he was speaking at that time of your organization.

Does this pamphlet that you passed out, does it—does it correctly state the purposes of the meeting and the tone of the meeting and so forth that was projected or planned and as announced in the leaflet.

A. The meeting was written to try to get a maximum number of people to attend the meeting and we had a number of speakers who would have spoken on numerous subjects.

Q. This does not indicate the type of subject and the tone?

A. That is the type of subject; yes, sir. Yes.

Q. The type of subject?

A. Yes.

[fol. 54] Q. And type of tone?

A. Yes.

Q. Type of subject and tone?

A. Yes; generally.

Q. And generally the approach to the subject?

A. Yes. I'd say generally.

Q. Yes.

And that is the pamphlet that was passed out before the meeting on the day or the day before the meeting?

A. Before the injunction; yes.

Q. How many of these were passed out after yesterday afternoon?

A. None to my knowledge, after the injunction was sent. The newspaper was passed out afterwards.

Q. Yes.

Now you did cause these to be served, these pamphlets to be served though before the injunction was—before it was passed out—it was passed out before the injunction was issued?

A. That's right; yes.

Q. And you had come over there, then, last evening, about 7:30, you had come over there and—

A. Exactly 7:30.

Q. And you say there was a crowd of people across from the meeting place there?

A. Yes.

And I recognized a number who were—

Q. And you went over there and fraternized with them or mixed with them?

A. I went as quickly as I—I went—I wasn't there more than two and a half minutes at the most.

Q. But you met with them and communicated to them the message you had there for them and gave them this, did you not?

(Indicating)

A. Yes. To go to Lipscomb.

That's correct.

Q. And passed this out?

A. And I gave them a newspaper.

[fol. 55] Q. Among the various people that were gathered congregating across from the place.

A. Approximately not more than twelve people.

Q. And how far was that from the place where the meeting was projected, where it was to—

A. It was next to the drug store along side a parking lot across the street from the proposed hall.

Q. Directly across the street.

Does the meeting place as announced on this pamphlet correctly identify it or correctly give it as the street address?

A. No.

There is an error in the street address.

Q. But that is 5329, the announced meeting place.

Is it not?

A. Yes.

But that is not the meeting place. The address is incorrect on the—

Q. How close is the correct meeting place to the address on the—

A. It is next door to that address.

Q. Right next door to it?

A. Yes.

Q. Did you threaten Mayor Smithson when you talked to him?

A. Absolutely not.

Q. Did he ask you to come to the city hall to see him?

A. He invited me and I said I would accept his invitation.

Q. But you never came, did you?

A. After the injunction was served, his secretary made an appointment with me to see him at 2 o'clock.

Q. Did you?

A. I called him that morning and he—she made the appointment for two o'clock and I was served with the injunction around noon and after receiving the injunction I saw that no further good could be made out of the meeting with the Mayor so I spent the rest of the afternoon trying to arrange for another hall.

Q. But you did not go and meet with him then?

A. No. Because the meeting was called off then; the meeting was off then.

[fol. 56] Q. I see.

Did you tell Mr. Smithson, or Mayor Smithson, that if he didn't issue the permit that you would smear his name all over the State?

A. I have never told Mr. Smithson or anybody, or any one else that I would smear anybody's name.

Q. Just what did you tell him in that connection, then, please, sir?

A. I told him that I thought, that if he was banning segregation meetings out there I thought that it would hurt him politically.

Q. Did you tell him that you would see to it that he was not ever elected Mayor of Fairfield again?

A. No. I didn't tell him that I would see to it that he would never be elected Mayor.

Q. Dr. Fields, did you notify the national T.V. networks of the trouble over in Birmingham recently?

Mr. Stoner: I object. I object to that question, your Honor. Irrelevant and immaterial to this hearing here.

The Court: Yes. I'll sustain the objection.

By Mr. Parsons, continuing:

Q. Well, let me ask you this: Were you formerly in the Citizens' Council over in Birmingham?

A. I still am.

Mr. Stoner: I object. Object to that too, your Honor.

The Court: Over-ruled; it's cross examination.

By Mr. Parsons:

Q. Let me ask you this, then:

Were you thrown out of the Citizens' Council in Birmingham?

A. No. I am still an active member.

Q. You are?

A. Yes.

And I have the chairman of the Citizens' Council of

Birmingham who is here right now and I am an active member of that organization.

Q. All right, sir.

Were you involved in blowing up a Jewish synagogue over in Atlanta?

A. Absolutely—absolutely not. I was not.

Mr. Stoner: I object. Object to that.

[fol. 57] By Mr. Parsons:

Q. You were not.

The Court: Sustained.

A. I was not. Absolutely not.

The Court: Sustained. Keep your voice down.

By Mr. Parsons:

Q. How many of these did you distribute last night, please, sir.

A. Well one to a person and I saw twelve people. Twelve papers, I guess.

Mr. Stoner: Your Honor, I would—

A. Well it was—

By Mr. Parsons:

Q. How many of the Thunderbolts was that?

Mr. Stoner: Yes, sir.

By Mr. Parsons:

Q. How many of the Thunderbolts did you distribute last night?

A. No more than twelve.

Q. Was there anyone else there to distribute—distributing Thunderbolts at that time with you?

A. Mr. Lyons was distributing.

Q. Was Mr. Lyons in any way connected with your organization?

A. Yes, he is.

Q. What is his connection?
A. Yes, he is a member and he is a Youth organizer.
Q. A Member and a Youth Organizer?
A. Yes.
Q. For your organization.
A. Yes.
Q. Of the National States Rights party?
A. Yes.
Q. Is he so employed?
A. He receives no pay or anything like that.
Q. But that is his—
A. He is a volunteer; yes.
Q. A volunteer?
A. Yes.
Q. In that capacity—
A. Yes.
[fol. 58] Q. —connected with the—
A. Yes.
Q. —this organization?
A. Yes.
Q. I see.
Did he know of the [illegible]nection?
A. Yes, he did.
Q. Where is he from?

Mr. Stoner: Your Honor, that is irrelevant as to where he is from. He is an American citizen.

The Court: I will over-rule the objection.
You may answer. It's a proposition of identity.

By Mr. Parsons:

Q. What's your answer?
A. He is from Reading, Pennsylvania, originally.
Q. Where is his home now?
A. He is staying in my—with me in my home now.
Q. Visiting with you?
A. Yes.

Mr. Parsons: I believe that's all.

Examination.

By the Court:

Q. Where are the headquarters of the National States Rights party?

Mr. Stoner: Sir, we—

A. We have two main offices. One in Knoxville and one right here, mainly operated out of my home.

Q. Have you qualified with the Secretary of State?

A. Yes. Yes, sir. We were on the ballot for the last election.

Q. You have a charter?

A. No. Our paper is—

Q. For Alabama?

A. Our paper is licensed, has a sales tax license.

Q. All right.

Mr. Parsons: Let me ask you this.

Recross examination.

By Mr. Parsons:

Q. Are you qualified to do business in the State of Ala- [fol. 59] bama, with the Secretary of State?

Mr. Stoner: Your Honor, a political party such as the Democratic, Republican and National States Rights don't have to have a license to do business—

A. They don't have a license either.

By Mr. Parsons, continuing:

Q. Didn't ask you that. I didn't ask you that.

Mr. Stoner: It's irrelevant, your Honor.

The Court: I will over rule the objection.

A. A political party has no license—

By Mr. Parsons:

Q. Do you know if you have one?
A. License? A license? To do what?
Q. You ever qualified with the Secretary of State to do business in the State of Alabama.
That is the question.
A. We are recognized as a legal political party on the ballot.
Q. You don't know whether you are qualified or not, do you?
A. Yes. We are on the ballot.
Q. You don't know—
A. We're on the ballot. We are on the ballot.
Q. Well—all right. Let it go.
Let it go.
All right, your honor.

The Court: All right, sir.

(Witness excused.)

Mr. Stoner: Your Honor, I would like to call Mr. Fred Short at this time, as a witness, now.
The Court: All right. Mr. Short?

[fol. 60] Mr. Fred Short called as a witness on behalf of the respondents herein, and having been first duly sworn, according to law, was thereupon examined, and testified as follows:

Direct examination.

By Mr. Stoner:

Q. Now, state your name, please, sir?
A. My name is Fred Short.
Q. Mr. Short, did you go to a meeting of the National States Rights Party last night?
A. I went to Lipscomb for it, where I had been told that there would be a meeting yesterday; yes.

Q. Had you been advised that the meeting would no longer be held in Fairfield?

A. Yes.

Q. Are you chairman of the Birmingham Citizens' Council?

A. I am Chairman of the Jefferson County Citizens' Council, sir.

Q. Do you know Dr. Fields here?

A. Yes.

Q. Is he a member in good standing of the Citizens' Council of Birmingham?

A. Yes.

Of Jefferson County.

Q. Jefferson County, I mean.

A. Yes.

Q. Excuse me.

A. Yes.

Q. Did you expect to see Dr. Fields at the meeting in Lipscomb?

A. Yes. I expected to see him.

Q. What time did you get to the meeting in Lipscomb?

A. About five till eight, I suppose. Around five or ten minutes to eight.

Q. That's all.

Thank you, sir.

A. All right.

The Court: Wait a minute. Mr. Parsons may want to cross-examine.

[fol. 61] Cross examination.

By Mr. Parsons:

Q. Have you ever been suspended from the Jefferson County Citizens' Council?

A. Have I ever been suspended from the Jefferson County Citizens' Council?

Q. Yes.

A. No, sir. I have been president for three years.

Q. All right.

A. I mean, I've been—

Q. All right.
A. —chairman. Chairman. I've been chairman.
Q. Has Dr. Fields ever been suspended from it?
A. No, sir.
Q. Okay.

Mr. Parsons: I believe that's all.
The Court: Let me ask you this, Mr. Short.

A. Yes, sir.

Examination.

By the Court:

Q. Are you a member of this National States Rights party?
A. No, sir. I am not. No. No, sir. I am not.
Q. Do you know what—or why the meeting—why it was decided to hold the meeting in Fairfield or in Lipscomb rather than in Birmingham?
A. I don't know why it was decided to be held in Birmingham—or was not decided to be held in Birmingham.
I know that they told me there had been an injunction was the reason they moved it to Lipscomb.
Q. I meant the original meeting?
A. I don't know about that.
Q. Scheduled in Fairfield?
A. I don't know about that. I don't know about that. I didn't have anything to do with scheduling it.
Q. All right.

(Witness excused.)

[fol. 62] Mr. Stoner: Is Mrs. Fields—she is outside in the hall with the little baby because the little baby was making noise and I would like to call her to the stand, please.
The Court: All right, sir.
Mrs. Fields.

Mrs. Delores Fields called as a witness on behalf of the respondents herein, and having been first duly sworn, was thereupon examined and testified as follows:

Direct examination.

By Mr. Stoner:

Q. State your name, please, ma'm.
A. Mrs. Delores Fields.
Q. Who is your husband?
A. Edward R. Fields.
Q. Where do you live?
A. 1509 Mims Street.
Q. Do you have any children?
A. One child.
Q. What's his age?
A. He'll be three next month.
Q. What's his name?
A. Allen Fields.
Q. Did you intend to go to a meeting of the National States Rights Party last night, Wednesday night?

Mr. Parson: Object.
The Court: Over-ruled; you may answer.

A. Yes. But not in Fairfield.

By Mr. Stoner:

Q. Where did you intend to go to the meeting?
A. To Lipscomb.
Q. Why did you go to Fairfield first?
A. Because we were going to go there to tell the people that might come there that there wasn't going to be a meeting.
Q. When you were there, did some police officers take you and your baby into custody?
[fol. 63] A. Yes. They marched me across the street.

Mr. Parsons: We object to that; it's irrelevant and immaterial, your Honor.
Mr. Stoner: It shows what the officers—
The Court: She's already answered.

Mr. Stoner: Part of the res gestae.
The Court: I over-rule it. She's answered.

By Mr. Stoner, continuing:

Q. Did they change their mind?
A. Yes.
After I got across the street, they did.
Q. Had you passed out any kind of leaflets there?
A. No, I didn't.
Q. Had you talked to anybody?
A. No.
Q. Did they tell you why they were arresting you?
A. No.
Q. Have you ever seen this leaflet entitled "White Workers Meeting"?
A. Yes.
Q. Were any copies of it to your knowledge passed out after the injunction was served on Dr. Fields?
A. No.
Q. What did you say?
A. No.
Q. And after the injunction was served, were there any plans whatever to hold the meeting in Fairfield?
A. No.
Q. That's all.
Thank you, Ma'm.

Cross examination.

By Mr. Parsons:

Q. Let me ask you this, please, Ma'm.
Didn't the officers tell you that you were not under arrest at that time you just told us about?
A. Not under arrest?
Q. Yes, ma'm.
[fol. 64] A. Well, they didn't say anything until after they hauled me across the street and then they didn't actually say anything and then they just decided to let me go.
Q. They didn't tell you you were not under arrest?
A. No.

Q. All right.
That's all.

(Witness excused.)

Mr. Stoner: That's all the evidence that the defendants —the defendant wishes to present, your Honor, except for argument and so I am ready after he gets through.

The Court: Do you have anything in rebuttal, Mr. Parsons?

Mr. Parsons: If the court please, no, sir.

The Court: All right, sir.

You like to argue?

Mr. Parsons: Yes, sir. I would like to make two or three remarks.

The Court: Well, how much time you want, as to each side?

Mr. Parsons: It won't take me more than 3 minutes for my part.

The Court: All right, sir.

I will give you three minutes to open and I will let Mr. Stoner argue his, and if you want any more time to reply, I will let him argue as long as he wants to and if you want to reply to it I will let you have adequate time to reply to it.

Mr. Parsons: Thank you.

The Court: All right, sir.

[fol. 65]

OPENING ARGUMENT FOR THE COMPLAINANT

By Mr. Parsons:

If it please the court, we have here an injunction issued forbidding Dr. Fields or his agents, servants or employees, or the servants, agents or employees of this organization, to hold a meeting in the City of Fairfield on October 11, or to distribute handbills such as had been distributed on October 10th in Fairfield and a copy of which was attached to the complaint.

Dr. Fields was served with that. And yet he came on out there just shortly prior to the time of the meeting in close proximity to the location that he had been enjoined from having the meeting and he just as effectively had a meeting

as if the injunction had not been issued because he went out there and he talked to all these people up and down.

He spread his literature. He accomplished his purpose. And, if the court please, in so doing he was in contempt of court.

The Court: All right, sir.

Mr. Stoner? You may reply.

Mr. Stoner: Yes, sir.

Final Argument for the Respondents

By Mr. Stoner:

Your Honor, Dr. Fields in this injunction was enjoined from circulating any of these leaflets entitled "White Workers Meeting". After he received this injunction he did not distribute any of them and neither did anyone else. There has been no testify (sic) here whatever today that one single leaflet such as this that was forbidden in the injunction was distributed at any time after the injunction was served.

Now, of course, there is an error about the street address of the meeting hall but counsel for the City of Fairfield says the fact that he came across the street and talked to a few people over there, that that constituted a violation of [fol. 66] the injunction; whereas that was across the street from the place where he had been enjoined from holding a meeting.

Further more, he only went there to carry out your orders in your injunction. If he had not of arrived on the scene there would have been people congregated there and waiting and a lot of them could have started talking and speaking among themselves. The crowd was already there.

There were some policemen there last night, so many—there were so many policemen there last night that they attracted additional people that otherwise wouldn't have been there. I had been notified myself that the—about the change in the meeting place and I just happened to be passing through there and wasn't even looking for the old location and I recognized that that was the place because of so many police officers—an unusually excessive number of police officers.

The odd thing, about this whole case, is that all of the evidence or practically all of the evidence produced by the City of Fairfield shows that Dr. Fields and Robert Lyons did not violate the injunction in any way. They did not distribute any more of the leaflets. They were forbidden in the injunction to.

There was nothing in the injunction to forbid the distribution of the Thunderbolt which was admittedly distributed, as it's been admitted by the defense and without any objections at all because there was nothing in the injunction to prohibit the distribution of the Thunderbolt.

So, also, the testimony of the witnesses for the City of Fairfield show that no meeting was held in violation of your injunction. Furthermore, the ordinances that they claim were violated prior to that time are unconstitutional in accordance with numerous decisions of the United States Supreme Court.

Like your Honor, I often disagree with the United States Supreme Court but when it comes to some kinds of decisions such as in the case of McNab versus United States and [fol. 67] Knapp versus Ohio—and I think they have done a good job of up-holding liberty in this country and those freedoms that are guaranteed by the United States Constitution.

The Constitution of the United States and the Constitution of Alabama guarantee freedom of speech and assemblage and that is what the respondents and defendants here in this hearing were doing. They were exercising their rights as recognized and guaranteed by both the Bill of of Rights in the State of Alabama and the Bill of Rights of the United States.

Now there are federal laws, Civil Rights Acts that were passed many years ago which say that anyone who violates the rights of any citizen is guilty of violation of federal law. One such law being Section 241, Chapter 13, Title 18 of the United States Code. There are some others in that same chapter, Chapter 13.

It appears to me that the people who conspired to prevent this meeting that was being held and the man who or men who conspired to prevent the distribution of this leaflet that was distributed prior to the serving of the injunction

are the ones who should be prosecuted. Not for contempt but for violation of certain sections in Chapter 13 of Title 18 of the United States Code and I ask your Honor to rule in accordance with the Constitution of the United States, the 14th and 1st Amendments of the Constitution of the United States, and also in accordance with the Constitution of the State of Alabama and uphold the rights of these two gentlemen here, Dr. Fields and Mr. Lyons.

I don't think we will have much freedom left in Alabama or anywhere else if before anybody could hold a meeting or distribute a leaflet they had to go get permission from a chief of police or the mayor of a town and the same thing has been stated several times in the United States Supreme Court decisions.

If that were the case, every time the Baptist Church got ready to hold a meeting in Fairfield they would have to run to the Mayor and ask him "may they have a meeting" and [fol. 68] then the Mayor will say:

"Well, I'll have to think about it. This is Saturday but I'll tell you Monday morning whether you can have a meeting Sunday."

And that wouldn't be freedom.

The way Fairfield is trying to express freedom over there, it is more like what goes on in certain foreign countries than in the spirit of George Washington and Patrick Henry.

So, on constitutional grounds, I ask you to dismiss these contempt charges.

The Court: Mr. Stoner, let me interrupt you there. Suppose the ordinances were unconstitutional. Can you attack the constitutionality of an ordinance collaterally in a contempt hearing?

Mr. Stoner: Well, if it's part of the—

The Court: If your remedy is to go ahead and obey the temporary writ and then on your final hearing come in with a motion to dissolve that, to dissolve it on the grounds that the ordinance in question is unconstitutional rather than just disregarding the order of the court.

Mr. Stoner: Well, there are grounds for getting the injunction there, on the basis of two of their city's ordinances

were violated and I contend they were void ab initio and complete nullities.

The Court: Well, be that as it may, but does that authorize the person to whom the writ is directed to completely disregard it?

Mr. Stoner: Well, in one situation, I would say that the—

The Court: Well, isn't the proper procedure for the person to whom the writ is directed or to whom the—the person to whom the writ is directed to file a motion to dissolve it on the grounds that the ordinance is unconstitutional?

Mr. Stoner: That will be done, your Honor.

The Court: All right, sir.

Well, I was just thinking about that, about the constitu-
[fol. 69] tion— Can you collaterally attack the constitutionality of an ordinance in a proceeding on a contempt?

Mr. Stoner: Well, since the injunction is based upon the violation of the—of an unconstitutional ordinance, of unconstitutional ordinances, it would seem to me that the injunction itself is unconstitutional and so I object to what they are trying to do on constitutional grounds and I also object in accordance with the evidence.

They haven't produced one iota of evidence here to show that there is—on the presumption—that the presumption is— In the first place, I think it unconstitutional and contrary to the United States and Alabama constitutions; but then, secondarily, presuming that the injunction is legal and constitutional, the evidence shows that they did not violate the injunction and that not only did they not violate the injunction but they went out of their way to obey that injunction by re-routing the people out to—to go outside of the City of Fairfield over to Lipscomb.

And, so, on the basis of constitutional law and the facts and evidence, I think—I can't see how they can be held in contempt. In fact, I think that actually we didn't need to put up any defense witnesses because the City of Fairfield's witnesses proved our case, that there had been no violation of your injunction and not only that but the officers testified that they heard Dr. Fields telling people to leave Fairfield and go to Lipscomb to the meeting.

And so I make a motion to dismiss the charges on the grounds that the injunction is unconstitutional because it is—because in obtaining it, it was based upon unconstitutional ordinances of the City of Fairfield.

And, further, I make a motion that the charges be dismissed on the grounds that all of the—that practically all of the evidence, including practically all of the evidence of the City of Fairfield proves that there was no violation of the injunction.

Thank you, your Honor.

[fol. 70] The Court: Mr. Parsons, do you want to reply?

Mr. Parsons: Yes, sir; please, sir.

Briefly.

The Court: All right, sir.

FINAL ARGUMENT FOR THE COMPLAINANT

By Mr. Parsons:

Mr. Parsons: The grounds for the injunction, not only are—are not only the violation of the ordinances, your Honor, but the inflammatory nature of the leaflet that was passed out, the character of it designed to create troubles, disturbances between the races and designed to incite breaches of the peace and what not and I would like to point out to your Honor also that the Thunderbolt here, which was passed out among those people there last night, when these parties here met with them on the street near the place of the proposed meeting, right across the street from it, has the same sort of agitation in it, the same sort of tendency to induce a breach of the peace, to induce disturbances between the races, to induce disorderly conduct.

We would just like to say that beyond a doubt the procedure is constitutional, the procedure is in order, and these parties here, both of whom knew of the injunction, came in spite of it and, as we said initially, met with the people there on the street in close proximity to the projected place of meeting in violation of the injunction and in defiance of it.

The Court: All right.

REPLY FOR THE RESPONDENTS

Mr. Stoner: Your Honor, I would like to say a few more words.

He has called this inciting to trouble and all. The same thing could be said about many daily newspapers that they incite defiance. There was a TV program recently, "Walking In My Shoes", or something like that, that some people said incited violence but I don't know of anybody getting out and trying to get out and get out an injunction against it. And people are entitled to their opinions and beliefs and they are entitled to the right to express themselves and there he is saying now that he objects to the expression [fol. 71] of opinions and beliefs and facts and that is where the constitutional question comes in.

In his argument he admits that he is trying to suppress the freedom of speech and of the press and of assemblage of Dr. Fields and Mr. Lyons and he says that the injunction was violated because they went across the street from where the meeting was to have been held and where it had been cancelled.

They didn't go to the meeting hall over there to hold any meeting. And, so, since they didn't go over there to hold any meeting, they didn't violate the injunction and I think that the City of Fairfield should compliment them for re-routing the people that did come to Fairfield over to the other town.

The Court: All right.

Let's take a five minute recess, gentlemen.

(Whereupon a recess was taken after which the proceedings continued as follows.)

All Present:

As before.

DECREE OF JUDGE E. L. BALL AND SENTENCE

The Court: Well, gentlemen, before I give you my decision, I have a remark or two I would like to make.

First, I don't believe it is the law of this State that you can collaterally attack the constitutionality of an ordinance

in a contempt proceeding without first purging yourself of that contempt, if there is any there.

And, second, it has been, either through good luck or the grace of somebody bigger than all of us here in the Bessemer Cut-off, that we have been singularly blessed with not having any race incident here in this area; and, particularly, I think, Fairfield has never had one. Back several years ago we did have a movement to move into one of our public parks here but that was straightened out within a matter of a few weeks by the City Attorney for Bessemer and other people. And since that time I don't believe we have had a single clash between the races, [fol. 72] either in Bessemer, or Fairfield, or any of the other city—cities of the Bessemer Division of this County. And it is the intention, I know, of the public officials, both of this county and of the various municipalities of the Bessemer Division of this County that we are going to do everything we can to maintain that status quo. We are going to try to keep peace between the races here and we are going to do everything that we can to keep people from agitating trouble.

Getting down to this case here:

While there is no evidence that the pamphlet was redistributed, the writ of injunction says "distribute further handbills, announcing such meetings, as were distributed in the city of Fairfield".

I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed.

If these respondents were of the opinion and so advised that these ordinances were unconstitutional they could have filed their motion to dissolve it and had their day in court and the final hearing on this injunction was to have been set down or was set down on November 17th, giving everybody adequate time to prepare their cases to come in and test the constitutionality of these ordinances.

It is my opinion that the ordinances are a legal exercise of the police power of the municipality.

Therefore, Dr. Fields and Mr. Lyons, if you will stand:

It is the judgment of the court that you are in contempt of this court and it is the judgment of the court that you be and are hereby adjudged in contempt and you are fined $50.00.

And as additional punishment you are ordered to be confined in the county jail for five days.

[fol. 73] If you want to appeal, I will set your bond, or for writ of certiorari, at $500.00, in each case.

Mr. Stoner: We wish to appeal, your Honor.

The Court: All right, sir.

Your bond is set at $500.00 for each one.

Mr. Stoner: Yes.

The Court: That's all.

—Which Was All of the Evidence Heard and Testimony Presented in the Hearing in the Above Cause—

[fol. 76] Judge's and Reporter's Certificate to foregoing transcript (omitted in printing.)

[fol. 77]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA,

BESSEMER DIVISION

CLERK'S CERTIFICATE

I, Elmore McAdory, Deputy Clerk and Register of the Circuit Court, Jefferson County, Bessemer Division, do hereby certify that the foregoing pages numbered one to twelve, both inclusive, contain a full, true, correct and complete transcript of all proceedings in this court; that pages numbered from thirteen to seventy-six, both inclusive, contain a transcript of evidence together with all proceedings thereon, as filed in this office, all being in a cause wherein the City of Fairfield, a Municipal Corporation is Plaintiff vs. Dr. Edward R. Fields and National States Rights Party, Defendants.

I further certify that on the 13th day of October, 1961, the defendants prayed for and obtained an appeal to the

present term of the Supreme Court of Alabama; and that Dr. Edward R. Fields and Robert Lyons are principals and D. Fred Short and Pearce S. Johnson are sureties for all costs and that said sureties in writing have waived their rights to claim personal property as exempt under the laws of the State of Alabama all of which appears of record in this Court, and all of which I hereby certify to the Clerk of the Supreme Court of Alabama.

Witness my hand and seal of said Court this the 29th day of November, 1961.

Elmore McAdory, Deputy Clerk and Register of the Circuit Court of Jefferson County, Alabama, Bessemer Division.

(Seal)

[fol. 78]

IN SUPREME COURT OF THE STATE OF ALABAMA

6th DIVISION

No. 801

ROBERT LYONS, Appellant,

vs.

CITY OF FAIRFIELD, Appellee.

ASSIGNMENTS OF ERROR

The Appellant says that there is manifest error in the foregoing transcript of the record of the proceedings had and done in the Honorable Circuit Court of Jefferson County, Alabama, Bessemer Division In Equity, to the hurt and prejudice of this Appellant, and for error assigns each of the following, separately and severally:

1. The lower Court erred in rendering the decree of conviction for contempt of court. The same was not supported by any legal evidence.

2. For that such judgment is void.

3. For that the Circuit Court had no authority to render said judgment in the premises.

4. For that the said Circuit Court was without authority to act in this proceeding.

5. For that there was no evidence to support said judgment.

6. For that the proceeding for which the alleged contempt was committed was a proceeding void ab initio.

7. That the injunction which was allegedly violated was vague, indefinite, uncertain and void.

8. For that the judgment deprives these petitioners, separately and jointly, of their liberty and property without due process of law, contrary to and in violation of the Fourteenth, First, Ninth, and Tenth Amendments to the Constitution of the United States.

[fol. 79] 9. For that the judgment deprives the petitioners, separately and jointly, of their inalienable rights contrary to and in violation of Sections 1, 2, 4, 6, 25, and 36 of Article I of the Constitution of Alabama, which rights are the right to speak, write, and publish their sentiments on all subjects, the right to engage in political activity, assemble in a peaceable manner, and to enjoy their liberty and property.

10. For that the punishment imposed in said judgment is excessive.

11. For that punishment imposed by said judgment bears no relation to the offense, if any offense be shown.

Conclusion

Appellant respectfully submits that the contempt decree in its entirety should be reversed.

That the respective costs should likewise be against Appellee.

Further, Appellant prays that this Honorable Court will consider this Appeal, 6 Div. 801, with his Petition for a Writ of Certiorari which is numbered 6 Div. 809, so that only one transcript will be required in this, the Supreme Court of Alabama.

Respectfully submitted,

J. B. Stoner, Attorney for Appellant, P. O. Box 48, Atlanta, Georgia, Phones 948-6620 and 451-1496.

Appellant requests oral argument and hereby endorses said request hereon.

J. B. Stoner, Attorney for Appellant.

Certificate of Service (omitted in printing.)

[fol. 80]

IN SUPREME COURT OF THE STATE OF ALABAMA

6th DIVISION

No. 802

DR. EDWARD R. FIELDS, Appellant,

vs.

CITY OF FAIRFIELD, Appellee.

ASSIGNMENTS OF ERROR

The Appellant says that there is manifest error in the foregoing transcript of the record of the proceedings had and done in the Honorable Circuit Court of Jefferson County, Alabama, Bessemer Division In Equity, to the hurt and prejudice of this Appellant, and for error assigns each of the following, separately and severally:

1. The lower Court erred in rendering the decree of conviction for contempt of court. The same was not supported by any legal evidence.

2. For that such judgment is void.

3. For that the Circuit Court had no authority to render said judgment in the premises.

4. For that the said Circuit Court was without authority to act in this proceeding.

5. For that there was no evidence to support said judgment.

6. For that the proceeding for which the alleged contempt was committed was a proceeding void ab initio.

7. That the injunction which was allegedly violated was vague, indefinite, uncertain and void.

8. For that the judgment deprives these petitioners, separately and jointly, of their liberty and property without due process of law, contrary to and in violation of the Fourteenth, First, Ninth, and Tenth Amendments to the Constitution of the United States.

[fol. 81] 9. For that the judgment deprives the petitioners, separately and jointly, of their inalienable rights, contrary to and in violation of Sections 1, 2, 4, 6, 25, and 36 of Article I of the Constitution of Alabama, which rights are the right to speak, write, and publish their sentiments on all subjects, the right to engage in political activity, assemble in a peaceable manner, and to enjoy their liberty and property.

10. For that the punishment imposed in said judgment is excessive.

11. For that punishment imposed by said judgment bears no relation to the offense, if any offense be shown.

Conclusion

Appellant respectfully submits that the contempt decree in its entirety should be reversed.

That the respective costs should likewise be against Appellee.

Further, Appellant prays that this Honorable Court will consider this Appeal, 6 Div. 802 with his Petition for a Writ of Certiorari which is numbered 6 Div. 809, so that only one transcript will be required in this, the Supreme Court of Alabama.

Respectfully submitted,

J. B. Stoner, Attorney for Appellant, P. O. Box 48, Atlanta, Georgia, Phones 948-6620 and 451-1496.

Appellant requests oral argument and hereby endorses said request hereon.

J. B. Stoner, Attorney for Appellant.

Certificate of Service (omitted in printing.)

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF ALABAMA

Re: 6th Div. 801, 6th Div. 802 and 6th Div. 809

AGREEMENT OF THE PARTIES AS TO THE RECORD
—Filed November 22, 1961

It Is Hereby Mutually Agreed by the parties, without waiver of any rights, that the transcript in the appeal cases will be transmitted in one record and that the appeals and the Writ of Certiorari will be considered on one transcript.

If it appears that Writ of Certiorari is the proper remedy, then the record will be considered to have been certified up in response to the Writ of Certiorari.

This the 22nd day of November, 1961.

J. B. Stoner

Frank B. Parsons

[fol. 83] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF ALABAMA

EX PARTE:
DR. EDWARD R. FIELDS and ROBERT LYONS

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT TENTH JUDICIAL CIRCUIT OF ALABAMA, BESSEMER DIVISION, IN EQUITY—Filed November 13, 1961

April 24, 1962 = Consolidated with 801 and 802 and Argued and Submitted on Motions and on Merits.

[fol. 84] To the Honorable Judges of the Supreme Court of Alabama:

Humbly complaining come your petitioners, Dr. Edward R. Fields and Robert Lyons, by their attorney, J. B. Stoner, and respectfully show unto this Honorable Court as follows:

1. On the 11th day of October, 1961, a bill of complaint for a Writ of Injunction was filed in the Circuit Court of Jefferson County, Alabama, Bessemer Division in Equity, Tenth Judicial Circuit, which said complaint was styled City of Fairfield, a Municipal Corporation, Complainant, vs. Dr. Edward R. Fields, and National States Rights Party, Respondents, and was numbered 19249. On said 11th day of October, 1961, a fiat was made by E. L. Ball, Circuit Judge, ordering that, upon the complainant entering into a good and sufficient bond, the Register issue a temporary injunction as prayed for in the complaint. A copy of said original complaint together with the fiat endorsed thereon is attached hereto, identified as Exhibit A and incorporated herein by reference the same as if herein set out.

2. On the 11th day of October, 1961, a bond was executed by, and in the name of City of Fairfield, a Municipal Corporation, as principal, with others as sureties. On the 11th day of October, 1961, a temporary injunction was issued as prayed for in said original bill of complaint. A Copy

of said preliminary injunction is hereto attached, identified as Exhibit B and incorporated herein by reference the same as if herein set out.

3. On the 11th day of October, 1961, in said cause numbered 19249, your petitioners, Dr. Edward R. Fields, and Robert Lyons, were arrested by policemen of the City of Fairfield and officers of the Bessemer Division of the Jefferson County Sheriff's Office and then charged with being in contempt of the Circuit Court of the Tenth Judicial Circuit, Bessemer Division In Equity.

4. On the 12th day of October, 1961, the said Dr. Edward R. Fields and Robert Lyons were brought before Judge E. L. Ball, the hearing having been set for 2 P. M. on the 12th day of October, 1961. The said Judge Ball entered an order adjudging said Fields and Lyons in contempt of Court and fined each of said named parties $50 and ordered [fol. 85] them to be confined in the county jail for five days, on the 12th day of October, 1961, at the conclusion of the hearing on the charge of contempt of court. A copy of the decree adjudging the said Fields and Lyons in contempt of court is hereto attached, identified as Exhibit C, and incorporated herein by reference the same as if herein set out.

5. On the 12th day of October, 1961, bond for appeal, or Writ of Certiorari, was set at $500 each by said Judge Ball and petitioners were released on the 13th day of October, 1961, upon the petitioners entering into a good and sufficient bond.

6. On the 12th day of October, 1961, petitioners, by their attorney, filed a notice with the Clerk of the Circuit Court of Jefferson County, Tenth Judicial Circuit, Bessemer Division In Equity, that they would appeal the contempt judgment of said Court to the Supreme Court of Alabama. Said Clerk has certified two notices of appeal to this Honorable Court where the cases have been numbered 6 Div. No. 801 and 6 Div. No. 802. However, this petition for Writ of Certiorari is the proper remedy and the transcript of the proceedings is the same for either remedy.

Your petitioners aver, separately and jointly, that the judgment, or decree, is erroneous, unwarranted and oppressive, unjust and void as to each of your petitioners. As grounds for charging that such judgment or decree is erroneous, unwarranted and oppressive, unjust and void, your petitioners separately and jointly, set down and assign, and insist upon the following, separate and several grounds:

(1) For that such judgment is void.

(2) For that the Circuit Court had no authority to render said judgment in the premises.

(3) For that the said Circuit Court was without authority to act in this proceeding.

(4) For that there was no evidence to support said judgment.

(5) For that the proceeding for which the alleged contempt was committed was a proceeding void ab initio.

(6) That the injunction which was allegedly violated was vague, indefinite, uncertain and void.

(7) For that the judgment deprives these petitioners, separately and jointly, of their liberty and property without due process of law, contrary to and in violation of the Fourteenth, First, Ninth, and Tenth Amendments to the Constitution of the United States.

[fol. 86] (8) For that the judgment deprives the petitioners, separately and jointly, of their inalienable rights, contrary to and in violation of Sections 1, 2, 4, 6, 25 and 36 of Article 1 of the Constitution of Alabama, which rights are the right to speak, write, and publish their sentiments on all subjects, the right to engage in political activity, assemble in a peaceable manner, and to enjoy their liberty and property.

(9) For that the punishment imposed in said judgment is excessive.

(10) For that punishment imposed by said judgment bears no relation to the offense, if any offense be shown.

Wherefore, petitioners, separately and jointly, pray that this Honorable Court will cause to issue to the Circuit Court, Tenth Judicial Circuit of Alabama, Bessemer Division In Equity, a Writ of Certiorari asking that all records and proceedings in said cause numbered 19249, including the contempt proceedings incidental to said cause, be certified to this Honorable Court for review to the end that the same may be duly revised, and that this Court will fix the amount of a Supersedeas Bond, or other bond, if bond be required to be executed by petitioners to stay the judgment or order rendered by said Court pending consideration of same by this Court.

Further, petitioners, separately and jointly, pray that this Honorable Court will combine their appeal which has been certified to this Court as 6 Div. 801 and 6 Div. 802 with the number that will be assigned by the Clerk of this Honorable Court to this Petition for a Writ of Certiorari, so that only one transcript of the proceedings of said Circuit Court will be required in this, the Supreme Court of Alabama.

Petitioners submit themselves to this Court and offer to perform its judgment hereinafter rendered.

If your petitioners are mistaken in the relief herein asked for, then they, separately and jointly, pray for the relief to which they may be entitled in the premises.

Respectfully submitted,

Dr. Edward R. Fields

Robert Lyons

J. B. Stoner, Attorney for Petitioners, P. O. Box 48, Atlanta, Georgia, Phones 946-2865 and 451-1496.

[fol. 87] *Duly sworn to by Robert Lyons and Dr. Edward R. Fields, jurats omitted in printing.*

[fol. 88]

EXHIBIT A TO PETITION—COMPLAINT, FIAT, AND HANDBILL

[Omitted. Printed at pages 1-5, ante]

[fol. 93]

EXHIBIT B TO PETITION—WRIT OF INJUNCTION

[Omitted. Printed at pages 5-6, ante]

[fol. 95]

EXHIBIT C TO PETITION—DECREE OF JUDGE E. L. BALL AND SENTENCE

[Omitted. Printed at pages 71-73, ante]

[fol. 97] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF ALABAMA

6th Div. 809

EX PARTE, DR. EDWARD R. FIELDS)
and ROBERT LYONS)

MOTION TO STRIKE PETITION—Filed November 22, 1961

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of Alabama:

Comes the City of Fairfield, a municipal corporation, by and through its attorneys, J. Clewis Trucks and Frank B. Parsons, and moves this Honorable Court to strike appel-

lants' petition for certiorari and for grounds of said motion assigns the following separately and severally;

(1) For that it affirmatively appears that appellants seek to have two separate judgments reviewed on single writ of certiorari.

(2) For that it does not appear in said petition wherein the Circuit Court was without authority.

(3) For that it does not appear in said petition wherein the action of the Circuit Court was void.

(4) For that it does not appear in said petition wherein the judgment of the Circuit Court violates the due process clauses of the Constitution of the United States.

(5) For that it does not appear in said petition wherein said judgment deprives petitioners of their rights in violation of the Constitution of Alabama.

(6) For that it does not appear in said petition wherein said punishment is excessive.

(7) For that it does not appear in said petition wherein said punishment bears no relation to the offense.

Respectfully submitted.

Frank B. Parsons

J. Clewis Trucks

[fol. 98] Certificate of service (omitted in printing).

[fol. 99]

IN SUPREME COURT OF THE STATE OF ALABAMA

The Court Met Pursuant to Adjournment

Present: All the Justices

6th Div. 801

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY

vs.

CITY OF FAIRFIELD

6th Div. 802

DR. EDWARD R. FIELDS and ROBERT LYONS and NATIONAL STATES RIGHTS PARTY

vs.

CITY OF FAIRFIELD

6th Div. 809

EX PARTE: DR. EDWARD R. FIELDS and ROBERT LYONS, Petitioners

Petition for Writ of Certiorari to Jefferson Circuit Court, in Equity, Bessemer Division

****

ORDER OF CONSOLIDATION AND OF SUBMISSION—April 24, 1962

It Is Ordered that the above styled causes be and the same are hereby consolidated pursuant to the agreement of the parties.

Whereupon, come the parties by attorneys and argue and submit these causes on motions and merits for decision.

[fol. 100]

IN SUPREME COURT OF THE STATE OF ALABAMA

October Term, 1961-62

6 Div. 801:802:809

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY

v.

CITY OF FAIRFIELD, a Municipal Corporation

Appeal from Jefferson Circuit Court

OPINION—June 14, 1962

MERRILL, Justice.

Dr. Edward R. Fields and Robert Lyons were adjudged to be in contempt of circuit court because they had been found guilty of violating a temporary injunction issued by the court against them as individuals, and against the National States Rights Party, of which they were officers, [fol. 100a] enjoining them from conducting an advertised meeting in Fairfield. Fields and Lyons were each fined $50 and sentenced to five days in jail.

Petitioners "appealed" their judgment of conviction to this court and later their attorney "discovered that writ of certiorari is the proper remedy in this case," and asked that the purported appeal be considered as a petition for writ of certiorari. We have complied with the request and so treat the cause now under review.

Petitioners were distributing handbills in the City of Fairfield, which read:

"WHITE WORKERS

"MEETING

"* NIGGERS ARE TAKING OVER UNIONS!

"* NIGGERS WANT OUR PARKS AND POOLS!

"* NIGGERS DEMAND MIXED SCHOOLS!

"Communists in NAACP and in WASHINGTON say

"Whites HAVE NO RIGHTS!

"The Nigger gets everything he DEMANDS!

"White Supremacy CAN be saved!

"Whites CAN STOP this second Reconstruction!

"Hear important Speakers from 4 States

"Time—8 P.M. Date—Wed. Oct. 11

"Place—5329 Valley Road

"In Downtown Fairfield, Alabama

"ABOVE THE CAR WASH

"THUNDERBOLT Mobile Unit Will Be Parked Out Front!

[fol. 100b]

"Sponsored by National States Rights Party

"Box 783, Birmingham, Alabama

"PUBLIC INVITED

"Come And Bring Your Friends!"

The attorney for the city sought a temporary injunction to enjoin petitioners from holding the advertised meeting because they had not complied with an ordinance of the City Code which provided "It shall be unlawful for any person or persons to hold a public meeting in the city or police jurisdiction without first having obtained a permit from the mayor to do so." The judge issued the temporary injunction and a copy was served on Fields at Noon, Wednesday, August 11th. Lyons also had notice of the temporary injunction which enjoined them "from holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961, until further orders from this Court; and this you will in no wise omit under penalty, etc."

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Fields and Lyons were arrested that night where a crowd had gathered across the street from the advertised place of meeting. Fields was making announcements to the crowd and both he and Lyons were distributing copies of "The Thunderbolt," the newspaper of the Party.

The petitioners make two points in brief. They say first that the evidence shows they did not violate the terms [fol. 100c] of the injunction. There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law; but if the court below misapplies the law to the facts as found by it or there is no evidence to support the finding, a question of law is presented to be reviewed upon the petition for certiorari. *Ex parte Wetzel*, 243 Ala. 130, 8 So. 2d 824.

We come now to the main point argued by petitioners—"that the temporary injunction was void ab initio on account of being contrary to and in violation of both the United States and Alabama Constitutions." This argument is based upon the premise that the ordinance of the City of Fairfield is unconstitutional. We cannot say that it is unconstitutional on its face.

In *Ex parte National Ass'n for Adv. of Colored People*, 265 Ala. 349, 91 So. 2d 214, we said:

> "On the petition for certiorari the sole and only reviewable order or decree is that which adjudges the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review. Certiorari lies to review an order or judgment of contempt for the reason that there is no other method of review in such a case. Ex parte Dickens, 162 Ala. 272, [fol. 100d] 50 So. 218, 220. Review on certiorari is limited to those questions of law which go to the validity of the order or judgment of contempt, among which are the jurisdiction of the court, its authority to make the decree or order, violation of which resulted in the judgment of contempt. It is only where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where pro-

> cedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained, that the order or judgment will be quashed."

Here, the circuit court had jurisdiction of the parties and the subject matter. It had the authority to make the decree or order, and on its face, the order disobeyed was not void. It is not contended that any procedural requirements were omitted.

In the face of this, petitioners, without moving to dissolve the temporary injunction, seeking a hearing, or in any way contesting the writ, proceeded to meet a crowd gathered across the street from the advertised place of meeting and distributed inflammatory literature.

As a general rule, an unconstitutional statute is an absolute nullity and may not form the basis of any legal right [fol. 100e] or legal proceedings, yet until its unconstitutionality has been judicially declared in appropriate proceedings, no person charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court; and he may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree, or on application for habeas corpus for release from imprisonment for contempt. *United States* v. *United Mine Workers of America*, 330 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677; *Howat* v. *Kansas*, 258 U. S. 181, 66 L. Ed. 550, 42 S. Ct. 277; *People* v. *Bouchard*, 6 Misc. 459, 27 N. Y. S. 201; *McLeod* v. *Majors*, 5th Cir., 102 F. 2d 128; *Pure Milk Asso.* v. *Wagner*, 363 Ill. 316, 2 N. E. 2d 288.

In the *United Mine Workers* case, supra, the court said:

> "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under

which the order is issued. In *Howat* v. *Kansas*, 258 U. S. 181, 189-90 (1922) this Court said:

> 'An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings [fol. 100f] properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

"Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searls*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; [fol. 100g] and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. * * *"

Under these authorities, petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings.

Affirmed.

Livingston, C.J., Simpson and Harwood, JJ., concur.

[fol. 101]

IN SUPREME COURT OF THE STATE OF ALABAMA

The Court Met Pursuant to Adjournment

Present: All the Justices

JEFFERSON CIRCUIT COURT

BESSEMER DIVISION

6th Div. 801: 802: 809

DR. EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY

vs.

CITY OF FAIRFIELD, a Municipal Corporation

JUDGMENT—June 14, 1962

The said causes having been consolidated, Whereupon,

Come the parties by attorneys and the record and matters therein assigned for errors, being argued and submitted on motions and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It Is Therefore Considered, Ordered and Adjudged that the judgment of the Circuit Court be in all things affirmed.

It Is Further Considered, Ordered and Adjudged that the Appellants-Petitioners, Edward R. Fields and Robert Elsworth Lyons, and D. Fred Short and Pearce S. Johnson, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

[fol. 102] [File endorsement omitted]

[fol. 103]

IN SUPREME COURT OF THE STATE OF ALABAMA

Sixth Division, No. 801, No. 802, No. 809

[Title omitted]

APPLICATION FOR REHEARING—Filed June 28, 1962

Comes Dr. Edward R. Fields and Robert Lyons, petitioners and appellants in the above styled cause, and move this Honorable Court to grant them a Rehearing, and to reverse, revise and hold for naught its judgment rendered on, to wit: the 14th day of June 1962, and affirming the judgment of the Circuit Court of Jefferson County, Bessemer Division in Equity, and to enter its order reversing and revising said judgment.

Petitioners and appellants further move the Court, in accordance with Rule 34, Revised Rules of the Supreme Court of Alabama, 1 February 1955, that the judgment of the Court be stayed or suspended during the pendency of the application for rehearing.

Submitted herewith is brief and argument in support of said motion.

J. B. Stoner, Of Counsel for Petitioners and Appellants.

Certificate of Service (omitted in printing).

[fol. 104]

IN SUPREME COURT OF THE STATE OF ALABAMA

The Court Met in Special Session
Pursuant to Adjournment

Present: All the Justices

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—
July 12, 1962

It Is Hereby Ordered that the applications for rehearing filed in the above causes on June 28, 1962, be and the same are hereby overruled.

[fol. 105] [File endorsement omitted]

[fol. 106]

IN SUPREME COURT OF THE STATE OF ALABAMA

Sixth Division, Case Nos. 801, 802, 809

Special Term, 1962

EX PARTE DR. EDWARD R. FIELDS and ROBERT LYONS,
Petitioners-Appellants

vs.

CITY OF FAIRFIELD, Appellee

APPLICATION FOR STAY OF EXECUTION—Filed July 25, 1962

Now come Dr. Edward R. Fields and Robert Lyons, Petitioners-Appellants in the above styled cause, who do hereby move this Honorable Court to grant them a stay of execution and a suspension of judgment for a period of ninety (90) days from July 12, 1962, on which date this Honorable Court did deny the Motion for Rehearing herein. Petitioners-Appellants do assign as grounds for the said stay of execution and suspension of judgment the necessity

for Petitioners-Appellants to be granted sufficient time to enable them to file a Petition for Writ of Certiorari or Appeal with the Supreme Court of the United States of America. Petitioners-Appellants do further aver that substantial questions with reference to the violation of their rights under the Fourteenth and First Amendments to the Constitution of the United States of America are involved herein.

And, Petitioners-Appellants do further pray that in the event such Petition for Writ of Certiorari or Appeal is so filed that the period of time of the said stay of execution and suspension of judgment be extended until such time as this cause be fully disposed of by the Supreme Court of the United States of America.

Respectfully submitted,

Charles Morgan, Jr. and Melvin L. Wulf, By: Charles Morgan, Jr., Of Counsel for Petitioners-Appellants.

[fol. 107] Certificate of Service (omitted in printing).

[fol. 108]

IN SUPREME COURT OF THE STATE OF ALABAMA

Special Session 1962

6th Div. 801, 802, 809

DR. EDWARD R. FIELDS and ROBERT LYONS,
Appellants-Petitioners

vs.

THE CITY OF FAIRFIELD, a Municipal Corp.,
Appellee-Respondent

ORDER GRANTING STAY OF JUDGMENT—July 26, 1962

Appellants-Petitioners, Dr. Edward R. Fields and Robert Lyons, having filed in this Court a petition for a stay of

the execution of the judgment rendered by this Court on June 14, 1962, in order that they may seek a review of the judgment of this Court in the Supreme Court of the United States by a Petition for Writ of Certiorari or appeal, and the same having been duly examined and understood by this Court,

It Is Hereby Ordered and Adjudged that the judgment in these causes be and the same is hereby stayed until October 11, 1962, and if proceedings have been instituted in the United States Supreme Court on or before said date, then said stay shall remain in full force and effect until such [fol. 108a] time as this cause be fully disposed of by the Supreme Court of the United States, or until further orders of this Court.

[fol. 109]

IN SUPREME COURT OF THE STATE OF ALABAMA

October Term, 1961-62

6 Div. 801:802:809

EDWARD R. FIELDS AND NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS, Appellants,

vs.

CITY OF FAIRFIELD, a Municipal Corporation, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 10, 1962

I. Notice is hereby given that Edward R. Fields, the National States Rights Party, and Robert Lyons, the appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of Alabama affirming a judgment of conviction for contempt, entered herein on June 14, 1962.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

Appellants were adjudged in contempt for violating an injunction issued ex parte under the purported authority of Sections 3-4, 3-5 and 14-53 of the General City Code of

the City of Fairfield, Alabama. Appellants Fields and Lyons were sentenced to serve 5 days in jail and pay a $50 fine. Appellants are presently enlarged on $500 bond, execution of their sentences having been stayed by the Supreme Court of Alabama on July 26, 1962, pending disposition of this appeal by the Supreme Court of the United States.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Bill of Complaint (with attached exhibit) of the City of Fairfield dated October 11, 1962, (sic) filed in the Circuit Court of Jefferson County, Alabama, Bessemer Division.

2. Fiat Ordering Issuance of Temporary Injunction [fol. 110] signed by the Honorable Edward L. Ball, Judge of the Circuit Court, Jefferson County, on October 11, 1961.

3. Writ of Injunction issued on October 11, 1961 in compliance with the Fiat issued by the Honorable Edward L. Ball.

4. Report of Proceedings held on October 12, 1961 in the Circuit Court of the Tenth Judicial Circuit, State of Alabama, Jefferson County, Bessemer Division in the matter of City of Fairfield vs. Dr. Edward R. Fields, and National States Rights Party, and Mr. Robert Lyons, No. 19249 in Equity.

5. Judgment of Contempt filed October 12, 1961.

6. Notice of Appeal to Supreme Court of Alabama filed October 12, 1961.

7. Assignments of Error in Cases 5801 (sic) and 802 in the Supreme Court of Alabama.

8. Petition for Writ of Certiorari filed by appellants herein with the Supreme Court of Alabama.

9. Opinion and judgment of the Supreme Court of Alabama, dated June 14, 1962.

10. Application for rehearing filed by appellants herein and order of the Supreme Court of Alabama, dated July 12, 1962, denying a rehearing.

11. Application by appellants herein for stay of execution of sentence.

12. Order of the Supreme Court of Alabama, dated July 26, 1962, staying execution of sentence.

III. The following questions are presented by this appeal:

1. Whether Sections 3-4 and 3-5 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on their face or as construed and applied in this case, abridge appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

2. Whether Section 14-53 of the General City Code of [fol. 111] Fairfield, Alabama, upon which appellants' contempt convictions rest, on its face or as construed and applied in this case, abridges appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

3. Whether appellants' convictions for contempt, being unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment to the United States Constitution.

Melvin L. Wulf, c/o American Civil Liberties Union, 156 Fifth Avenue, New York 10, New York;

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama,

Attorneys for Edward R. Fields, National States Rights Party, and Robert Lyons, appellants.

Proof of Service (omitted in printing).

[fol. 112]

IN SUPREME COURT OF THE STATE OF ALABAMA

October Term, 1961-62

6 Div. 801:802:809

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS, Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation, Appellee.

AMENDMENT TO NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 18, 1962

Notice is hereby given that Edward R. Fields, The National States Rights Party, and Robert Lyons, the Appellants above named, hereby amend the Notice of Appeal to the Supreme Court of the United States previously filed in this case by adding to the questions presented therein, the additional question presented set forth below:

4. Whether consideration by the Supreme Court of the United States of a challenge on federal grounds to the validity of a municipal ordinance on its face, or as construed and applied, may be precluded where Appellants are found in contempt of an ex parte temporary injunction which purports to enforce compliance with the ordinance, and the state court refuses to entertain the merits of the challenge on the procedural ground that Appellants "chose to disregard the temporary injunction rather than contesting it by orderly and proper procedure," where the consequence of the state procedural rule is to nullify Appellants' rights [fol. 113] of free speech, press and assembly in violation of

the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

Melvin L. Wulf, c/o American Civil Liberties Union, 156 Fifth Avenue, New York 10, New York;

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama,

Attorneys for Edward R. Fields, National States Rights Party and Robert Lyons, Appellants.

[fol. 114] Proof of Service (omitted in printing).

[fol. 115] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 116]

SUPREME COURT OF THE UNITED STATES

No. 566, October Term, 1962

EDWARD R. FIELDS, et al., Appellants,

vs.

CITY OF FAIRFIELD.

ORDER NOTING PROBABLE JURISDICTION—March 18, 1963

Appeal from the Supreme Court of the State of Alabama.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The Solicitor General is invited to file a brief expressing the views of the United States.

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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

JURISDICTIONAL STATEMENT

MELVIN L. WULF,
156 Fifth Avenue,
New York 10, N. Y.

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736 Bank for Savings Building,
Birmingham, Alabama,
Attorneys for Appellants.

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IN THE

Supreme Court of the United States

October Term, 1962

No.

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

JURISDICTIONAL STATEMENT

Opinions Below

The opinion of the Supreme Court of Alabama is reported at — Ala.—, 143 So. 2d 177 and set out *infra* at pp. 2a-7a. No opinion was written by the Circuit Court of Jefferson County, but its oral opinion rendered at the time of judgment is contained at R. 71-73 and is set out *infra* at pp. 8a-9a.

Jurisdiction

(i) Appellee filed a bill of complaint (R. 2-3) in the Circuit Court of Jefferson County on October 11, 1961, alleging that appellants intended to hold a public meeting without obtaining a permit, in violation of Section 14-53

of the General City Code of Fairfield, and had distributed handbills announcing the meeting in violation of Sections 3-4 and 3-5 of the General City Code. The bill prayed that "a temporary writ of injunction or restraining order be immediately issued by this Court * * * restraining [appellants] from holding said meeting * * * and distributing said handbills," and that the injunction be made permanent after final hearing. The temporary writ (R. 5-6) was issued the same day on appellee's *ex parte* application. The next day, appellants Fields and Lyons were found in criminal contempt of the injunction and sentenced to five days in jail and a $50 fine.

(ii) The judgment of conviction was affirmed and entered by the Alabama Supreme Court on June 14, 1962 (R. 101) and a timely application for rehearing was denied on July 12, 1962 (R. 104). Execution of sentence was stayed pending this appeal (R. 108). Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Alabama on September 10, 1962 (R. 109-111). An amended Notice of Appeal was filed on September 18, 1962 (R. 112-113).

(iii) The jurisdiction of this Court to review by appeal the judgment of the Supreme Court of Alabama is conferred by 28 U. S. C. § 1257(2).

(iv) The cases which sustain the jurisdiction of this Court are *Lovell* v. *Griffin*, 303 U. S. 444; *Jamison* v. *Texas*, 318 U. S. 413; *Thomas* v. *Collins*, 323 U. S. 516; *Staub* v. *Baxley*, 355 U. S. 313.

The Statutes Involved

GENERAL CITY CODE OF FAIRFIELD, ALABAMA

Sec. 3-4. Handbills, etc.—Distribution on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper

handbills, circulars, dodgers or other advertising matter. [Ord. No. 354, § 4 (1957).]

Sec. 3-5. Same—Placing or throwing in automobiles.

It shall be unlawful for any person to distribute in the city any handbill or other similar form of advertising by throwing or placing the same in any automobile or other vehicle within the city. [Ord. No. 354, § 5 (1957).]

Sec. 14-53. Public meetings; permit required.

It shall be unlawful for any person or persons to hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor, to do so. [Ord. No. 184, § 4, 11-9-32.]

Questions Presented

1. Whether Sections 3-4 and 3-5 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on their face or as construed and applied in this case, abridge appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

2. Whether Section 14-53 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on its face or as construed and applied in this case, abridges appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

3. Whether consideration by the Supreme Court of the United States of a challenge on federal grounds to the validity of a municipal ordinance on its face, or as construed and applied, may be precluded where appellants are found in contempt of an *ex parte* temporary injunction which

purports to enforce compliance with the ordinance, and the state court refuses to entertain the merits of the challenge on the procedural ground that appellants "chose to disregard the temporary injunction rather than contesting it by orderly and proper procedure," where the consequence of the state procedural rule is to nullify appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

4. Whether appellants' convictions for contempt, being unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

I. When and How the Federal Questions Were Raised.

The federal questions presented by this appeal were first raised by appellants in the Circuit Court on their oral motion to dismiss (R. 66-69). They were raised thereafter in appellants' petition for certiorari to the Supreme Court of Alabama (R. 84-86), and on the application for rehearing (R. 103).

II. The Facts.

Appellant Fields is Information Director of the National States Rights Party. Appellant Lyons is Youth Organizer of the Party (R. 57). The Party, which stands for white supremacy and segregation (R. 53), has been on the ballot in Alabama (R. 58).

Sometime prior to Wednesday, October 11, 1961 (R. 44), the Party had handbills distributed in Fairfield which contained the following announcement (R. 42):

WHITE WORKERS
MEETING

*NIGGERS ARE TAKING OVER UNIONS!

*NIGGERS WANT OUR PARKS AND POOLS!

*NIGGERS DEMAND MIXED SCHOOLS!

Communists in NAACP and in Washington say
Whites HAVE NO RIGHTS!
The Nigger gets everything he DEMANDS!

White Supremacy CAN be saved
Whites CAN STOP this second Reconstruction!

Hear Important Speakers From 4 States

Time—8 P. M. Date—Wed. Oct. 11

Place—5329 Valley Road

In Downtown Fairfield, Alabama

ABOVE THE CAR WASH

THUNDERBOLT Mobile Unit Will be Parked Out
Front Sponsored by National States Rights Party

Box 783, Birmingham, Alabama

PUBLIC INVITED

Come and Bring Your Friends

At about 5:00 P. M., Tuesday, October 10, 1961, the day before the scheduled meeting, the Mayor of Fairfield sent a notice to appellant Fields that he had violated a city ordinance that prohibited the distribution of handbills. The Mayor also informed Fields that another ordinance forbade public meetings without a permit (R. 43).

At about 6:00 P. M. the same evening, Fields phoned the Mayor at his home to discuss the issuance of a permit for the meeting (R. 36-38). Fields called the Mayor's office the morning of the following day and made an appointment for 2:00 P. M. that afternoon for further discussion (R. 55). Around noon of that day, however, Fields was served with an injunction (R. 24) forbidding him, the National States

Rights Party, their servants, agents and employees, from holding the scheduled meeting and from distributing any handbills announcing the meeting. Fields did not keep his 2:00 P. M. appointment.

The injunction was issued on the *ex parte* application of the City of Fairfield. The Bill of Complaint (R. 2-4) alleged, among other things, that the appellants were "distributing handbills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield," that the purpose of the announced meeting "is to create ill will, disturbances and disorderly conduct between the races," and that the meeting "will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield."

About 7:30 P. M. on the evening of the scheduled meeting, appellants Fields and Lyons arrived at the meeting place to announce that the meeting site had been transferred to the city park at Lipscomb, a nearby town (R. 16, 22, 25, 27, 49, 54, 60, 62, 63).[1] Subsequent to the service of the injunction, no meeting was held in Fairfield (R. 48, 55), no handbills were distributed (R. 18, 22, 26, 31, 44, 47, 54, 63, 72),[2] nor was there any disturbance whatsoever (R. 17, 25, 28, 55).

Appellants were arrested for violating the injunction. On the following day, October 12, 1961, after a hearing, each was found in contempt and sentenced to serve 5 days in jail and pay a $50 fine.

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[1] Earlier the same day, appellant Lyons and another person were prohibited by the police from entering the meeting place (R. 33, 50).

[2] Some copies of the Party's newspaper, *Thunderbolt*, were distributed near the original meeting place, but it contained no notice of the Fairfield meeting, nor had its distribution been enjoined. A copy of the newspaper is contained at R. 19.

III. The Disposition Below of the Federal Questions.

The Circuit Court, although it found that "the ordinances are a legal exercise of the police power of the municipality" (R. 72), also found that "I don't believe it is the law of this State that you can collaterally attack the constitutionality of an ordinance in a contempt proceeding * * *" (R. 71).

The Supreme Court of Alabama also found the ordinances not unconstitutional (R. 100), but held that appellants "may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree * * *" (R. 100).

The Questions Are Substantial

1. Sections 3-4 and 3-5 of the Code of Fairfield purport to prohibit the distribution of "any paper handbills, circulars, dodgers or other advertising matter," at all times and in all public places. A statute of that magnitude is unconstitutional on its face, for it abridges the rights of free speech and free press that are secured by the First and Fourteenth Amendments to the United States Constitution. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *CIO*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Talley* v. *California*, 362 U. S. 60.

Sections 3-4 and 3-5 are almost identical to the ordinances involved in Numbers 13, 18 and 29 in *Schneider*, which, as the Court said, "absolutely prohibit [distribution] in the streets and, one of them, in other public places as well." 308 U. S. at 162. The Court held those ordinances invalid on their face on the ground that they abridged "the free communication of information and opinion secured by the Constitution." *Id.* at 163.

This case is aggravated by the fact that appellants were restrained in advance from distributing any handbills what-

ever. Thus, appellee, relying upon Sections 3-4 and 3-5, burdened appellants with a prior restraint, a particularly noisome violation of the First Amendment, *Near* v. *Minnesota*, 283 U. S. 697; *Burstyn* v. *Wilson*, 343 U. S. 495.

Moreover, the trial court explicitly found that no handbills were distributed after the injunction was served (R. 72). What the court in fact found, was that appellants had distributed copies of their newspaper, *The Thunderbolt*, whose circulation had not been enjoined. Though the court acknowledged that there was no announcement of the meeting in the issue distributed,[3] it said, "That was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed"(R. 72). Thus, the high order of protection conferred by the Constitution on the freedom of the press, was arrantly disregarded. *Near* v. *Minnesota, supra; Grosjean* v. *American Press Co.*, 297 U. S. 233; *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*, 328 U. S. 331; *Craig* v. *Harney*, 331 U. S. 367.

2. Section 14-53 of the Code of Fairfield requires that a permit be obtained from the Mayor "to hold a public meeting in the city or its police jurisdiction." Because the ordinance contains no "narrowly drawn, reasonable and definite standards for the officials to follow * * *," it is invalid on its face. *Niemotko* v. *Maryland*, 340 U. S. 268, 271; *Hague* v. *C. I. O.*, 307 U. S. 496, 516; *Kunz* v. *New York*, 340 U. S. 290. Mr. Justice Frankfurter, concurring

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[3] The issue consists of eight pages. The front page headline says "'Freedom Riders' Burn Bus While Bobby Kennedy Blames 9 Innocent White Alabamians." The centerfold headline said "Kennedys Start Second Reconstruction of South." Two and a half pages are devoted to excerpts from Henry Ford's The International Jew (R. 19).

in *Kunz*, said, "If a municipality conditions holding street meetings on the granting of a permit * * *, the basis which guides licensing officials in granting or denying a permit must not give them a free hand, or a hand effectively free when the actualities of police administration are taken into account." 340 U. S. at 284-285.

The size of the free hand wielded against appellants, when measured by its reach in this case, is remarkable. The power it assumed was not restricted to regulating the "time, place and manner," of a meeting on the streets or in the parks,[4] but rather it asserted the power to suppress in advance a meeting of a political party to be held in a private hall.

There have been two cases before this Court which were concerned with the power asserted by a State to prohibit a peaceful public meeting held in a private hall merely because the purpose of the meeting was disagreeable to the government: *DeJonge* v. *Oregon*, 299 U. S. 353; and *Thomas* v. *Collins*, 323 U. S. 516.[5]

In *DeJonge*, an Oregon statute purported to make criminal, among other things, "the organization of an * * * assemblage which advocates [criminal syndicalism], and presiding at or assisting in conducting a meeting of such an organization, society or group." DeJonge's "sole offense as charged * * * was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party." 299 U. S. at 362.

The Court, holding the conviction repugnant to the due process clause of the Fourteenth Amendment, said:

> "The holding of meetings for peaceable political action cannot be proscribed. Those who assist in

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[4] Compare *Cox* v. *New Hampshire*, 312 U. S. 569, 576.

[5] Compare *Local 309* v. *Gates*, 75 F. Supp. 620.

> the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is to be held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." 299 U. S. at 365.

In *Thomas*, an official of a labor union was held in contempt of a restraining order—issued *ex parte*, as here—that forbade him from violating a Texas statute regulating the solicitation of membership in trade unions. The order was issued in anticipation of a meeting at which the appellant was scheduled to speak. He appeared and spoke at the meeting, and was held in contempt. The Court, holding that the statute contravened the First Amendment, said that "a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment," 323 U. S. at 540.

Whether or not a State has the power to prohibit in advance peaceful assemblies merely because its officials prefer to suppress discussion of issues of public importance or maintain the *status quo*, is a constitutional question of the first magnitude. It is presented here in graphic form.

The purpose of the meeting organized by appellants was to discuss race relations. Appellants maintain that the white race is superior to the Negro race and are entirely opposed to any form of racial integration. They intended

to discuss—and oppose—the integration of labor unions, parks, pools and schools. Their opposition to integration, of course, is constitutionally irrelevant. Compare *Terminiello* v. *Chicago*, 337 U. S. 1, and *Rockwell* v. *Morris*, 10 N. Y. 2d 721, cert. denied, 368 U. S. 913, with *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449 and *Bates* v. *Little Rock*, 361 U. S. 516.

The power of a State to suppress speech and assembly may not be applied in advance, but only, if at all, when there is a clear and present danger that the speech or assembly threatens to incite illegal conduct. *Schenk* v. *United States*, 249 U. S. 47, *Gitlow* v. *New York*, 268 U. S. 652 (dissent), *DeJonge* v. *Oregon*, *supra*, *Bridges* v. *California*, 314 U. S. 252, *Thomas* v. *Collins*, *supra*. Compare *Yates* v. *United States*, 354 U. S. 298. The record here is barren of evidence of any such danger. Appellee's bill of complaint contains no factual allegations to support its conclusions that the purpose of the meeting was "to create ill will, disturbances, and disorderly conduct between the race," and that it "will constitute a public nuisance, injurious to the health, comfort or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield" (R. 3).[6]

The true purpose of the restraints imposed on appellants was revealed by the sentencing court. It said, "Back several years ago we did have a movement to move into one of our public parks here but that was straightened out within a matter of a few weeks * * *. And it is the intention, I know, of the public officials * * * that we are going to do everything we can to maintain that status quo" (R. 72). But a State "may not suppress free communication of views * * * under the guise of preserving desirable conditions." *Cantwell* v. *Connecticut*, 310 U. S. 296, 308.

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[6] The record shows that a meeting held by appellants the previous evening was entirely peaceable (R. 47).

The ruling below, if permitted to stand, will empower the States to burden free speech, press and assembly to an extent not heretofore tolerated by this Court. The decision whether those burdens offend the First Amendment, requires full briefing and oral argument before the Court.

3. Whether or not a state rule of procedure may be interposed between an individual and his rights of free speech, press and assembly under the circumstances present in this case, is a substantial federal question that has not been decided by this Court.

The Alabama Supreme Court held that appellants could test neither the constitutionality of the ordinances on which the temporary injunction was based, nor the validity of the injunction itself, by violating its terms. It relied principally [7] on *United States* v. *United Mine Workers*, 330 U. S. 258, which involved the question whether the Norris-LaGuardia Act prohibited a United States District Court from enjoining a coal miners' strike when the United States was in possession of the mines. Although *United Mine Workers* affirmed convictions of contempt of an *ex parte* restraining order, the case is not authority for the proposition that a contempt conviction is valid even if the underlying order is void on constitutional grounds.

First, of the five Justices in the majority, three held the order valid. Though they went on to declare that even if the order were void, the defendants nonetheless were required to obey it, that much of their opinion was unnecessary to their decision and therefore not binding. Mr. Justice Black and Mr. Justice Douglas likewise found the order valid and thought it unnecessary, therefore, to decide the academic problem of a void order. They dissented in part on other grounds. Mr. Justice Murphy and Mr. Justice Rutledge concluded both that the order was void and the

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[7] The opinion also cites *Ex Parte National Association for Advancement of Colored People*, 265 Ala. 349, 91 So. 2d 214, but neglects to note that that case was reversed, in *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449.

contempt conviction therefore invalid. Only Mr. Justice Frankfurter and Mr. Justice Jackson held the contempt conviction valid even though the order on which it was based was, in their opinion, invalid. Thus, of nine Justices writing five opinions, only Justices Frankfurter and Jackson squarely adopted the proposition advanced here by the Supreme Court of Alabama.

Second, the issue in *United Mine Workers* dealt only with the question whether the Norris-LaGuardia Act was to be interpreted to prohibit a United States District Court from enjoining a strike under the unique facts of that case. There was no discussion in the Court's opinion bearing on the Act's constitutionality, nor was there any claim that the Act was unconstitutional.

Third, there was substantial doubt whether the Norris-LaGuardia Act applied to the facts in *United Mine Workers*, for as the Court noted, the question "had not previously received judicial consideration." 330 U. S. at 293. In the case at bar, to the contrary, it is perfectly clear that the ordinances in question are unconstitutional both on their face and as construed and applied. See Points 1 and 2, *supra*. Consequently, the "different result" which Mr. Chief Justice Vinson anticipated, "were the question of jurisdiction frivolous and not substantial", 330 U. S. at 293, is required in this case.

Fourth, the nature of the *United Mine Workers* case, dealing as it does with a labor dispute, sets it apart from the instant case which comes here unfettered by the qualifications that may attach to cases that concern industrial conflict. Compare, *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722; *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; *Building Service Employees* v. *Gazzam*, 339 U. S. 532; *Hughes* v. *Superior Court*, 339 U. S. 460; *Local Union No. 10* v. *Graham*, 345 U. S. 192.

Fifth, cases decided by this Court both before and after *United Mine Workers* have held that a contempt conviction under a void order is itself void. *Ex Parte Rowland*, 104

U. S. 604; *Ex Parte Fisk*, 113 U. S. 713; *Re Ayers*, 123 U. S. 443; *Re Sawyer*, 124 U. S. 200. See also *United Gas, Coke & Chemical Workers* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *In the Matter of Green*, 369 U. S. 689.

By utilizing the supposed doctrine of *United Mine Workers*, Alabama has effectively curtailed appellants' rights of speech, press and assembly, and Mr. Justice Rutledge's prophecy in his dissent in *United Mine Workers* has come to pass:

> "[I]f [the Court's holding] should become the law, for every case raising a question not frivolous concerning the court's jurisdiction to enter an order or judgment, that punishment for contempt may be imposed irrevocably simply upon a showing of violation, the consequences would be equally or more serious * * *.
>
> The First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and free assembly could be brought to nought and censorship established widely over these areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. * * * These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason." 330 U. S. at 351-352.

If appellants were not judged in contempt of the preliminary injunction, but rather were convicted directly of violating the ordinances on which the injunction was based, there is no question that the ordinances' constitutionality could have been tested by violating them. *Staub* v. *Baxley*, 355 U. S. 313. But Alabama, by interposing a temporary injunction between appellants and the ordinances, has devised a method that, if ratified by this Court, will allow circumvention of the *Staub* doctrine and confer on the states a technique to nullify the precise purpose the First Amendment is intended to serve—full discussion of all matters of

public concern, which Mr. Justice Brandeis called "a political duty." *Whitney* v. *California*, 274 U. S. 357, 376 (concurring opinion). Public issues frequently are short run, and if the government were empowered to suppress discussion by use of an injunction issued, as here on the flimsiest ground,[8] the purpose of the discussion may well have passed by the time the appellate remedies were exhausted. For example, it would enable a political candidate to be enjoined from speaking during the campaign period preceding an election. If he violated the injunction he would be imprisoned; if he bowed to the injunction and tested its constitutionality in "orderly and proper proceedings," the election will have long ended. In either case, the electorate would not have heard him and the electoral process would be crippled.[9]

---

[8] So flimsy "as to be usurping judicial forms", thereby satisfying Mr. Justice Frankfurter's criterion for treating the injunction "as though it were a letter to a newspaper." *United Mine Workers*, *supra* at 309-310.

[9] On the day this Jurisdictional Statement was printed, the New York Times carried the following story (October 30, 1962, p. 22):

> Los Angeles, Oct. 29—California Democrats won a court order today against the sale and distribution of the controversial Little Red Book until after the election.
>
> Democrats alleged that the booklet, "California: Dynasty of Communism," implied that Gov. Edmund G. Brown and other Democratic incumbents were soft on Communism.
>
> Superior Judge Kenneth N. Chantry issued a temporary restraining order prohibiting the printing, posting or distribution of the 32-page booklet. He set Nov. 7, the day after Election Day, for a hearing on an injunction.
>
> The order followed a libel suit for $500,000 damages brought by Eugene L. Wyman, the state chairman, and other Democratic leaders.
>
> They alleged the booklet was designed to "injure, defame, discredit and defeat" Democratic officials.
>
> It was contended the booklet contained false statements and doctored photographs.
>
> * * *
>
> Ordered
>
> Judge Chantry ordered defendants to take back any copies in the hands of postal officials.

Whether or not the Alabama rule of procedure announced by the court below shall be permitted to stand between appellants and their rights under the Constitution, is a substantial federal question that should be fully briefed and argued before the Court.

4. This Court has held that convictions devoid of evidentiary support are unconstitutional under the due process clause of the Fourteenth Amendment. *Thompson* v. *City of Louisville*, 362 U. S. 199; *Garner* v. *State of Louisiana*, 368 U. S. 157. This is such a case.

The Circuit Court expressly found that "there is no evidence that the pamphlet was re-distributed" (R. 72), but as we pointed out above, he held that the injunction was violated by the distribution of appellants' newspaper even though it contained no notice of the meeting. The Circuit Judge said nothing at all about whether the evidence sustained a finding that appellants had violated the ban on the scheduled meeting—nor could he, for it is undisputed that appellants had cancelled it. Although appellants were in the vicinity of the meeting hall, it was only to notify those persons who may have come to the announced meeting place, that the meeting was to be held elsewhere, outside the City of Fairfield. Nonetheless, the Supreme Court of Alabama said that "There is evidence to support the finding that they did violate the terms of the temporary injunction" (R. 100).

CONCLUSION

For the reasons stated, it is urged that jurisdiction be noted.

Respectfully submitted,

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October 31, 1968

[Judgment of the Supreme Court of Alabama]

THE SUPREME COURT OF ALABAMA

Thursday, June 14, 1962

The Court Met Pursuant to Adjournment

Present: All the Justices

Jefferson Circuit Court

Bessemer Division

6th Div. 801: 802: 809

———o———

DR. EDWARD R. FIELDS and National States Rights Party,

vs.

CITY OF FAIRFIELD, a Municipal Corporation.

———o———

The said causes having been consolidated, WHEREUPON,

Come the parties by attorneys and the record and matters therein assigned for errors, being argued and submitted on motions and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the judgment of the Circuit Court be in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the Appellants-Petitioners, Edward R. Fields and Robert Elsworth Lyons, and Dr. Fred Short and Pearce S. Johnson, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

[Opinion of the Supreme Court of Alabama]

DR. EDWARD R. FIELDS and National States Rights Party,

v.

CITY OF FAIRFIELD, a Municipal Corporation.

APPEAL FROM JEFFERSON CIRCUIT COURT

MERRIL, *Justice*:

Dr. Edward R. Fields and Robert Lyons were adjudged to be in contempt of circuit court because they had been found guilty of violating a temporary injunction issued by the court against them as individuals, and against the National States Rights Party, of which they were officers, enjoining them from conducting an advertised meeting in Fairfield. Fields and Lyons were each fined $50 and sentenced to five days in jail.

Petitioners "appealed" their judgment of conviction to this court and later their attorney "discovered that writ of certiorari is the proper remedy in this case," and asked that the purported appeal be considered as a petition for writ of certiorari. We have complied with the request and so treat the cause now under review.

Petitioners were distributing handbills in the City of Fairfield, which read:

Opinion of Supreme Court of Alabama

"WHITE WORKERS

"MEETING

"'NIGGERS ARE TAKING OVER UNIONS!

"'NIGGERS WANT OUR PARKS AND POOLS!

"'NIGGERS DEMAND MIXED SCHOOLS!

"Communists in NAACP and in Washington say "Whites HAVE NO RIGHTS!

"The Nigger gets everything he DEMANDS!

"White Supremacy CAN be saved!

Whites CAN STOP this second Reconstruction!

"Hear Important Speakers from 4 States

"Time—8 P. M. Date—Wed. Oct. 11

"Place—5329 Valley Road

"In Downtown Fairfield, Alabama

"ABOVE THE CAR WASH

"THUNDERBOLT Mobile Unit Will Be Parked Out Front Sponsored by National States Rights Party

"Box 783, Birmingham, Alabama

"PUBLIC INVITED

"Come and Bring Your Friends!"

The attorney for the city sought a temporary injunction to enjoin petitioners from holding the advertised meeting because they had not complied with an ordinance of the City Code which provided "It shall be unlawful for any person or persons to hold a public meeting in the city or police jurisdiction without first having obtained a permit from the mayor to do so." The judge issued

the temporary injunction and a copy was served on Fields at Noon, Wednesday, August 11th. Lyons also had notice of the temporary injunction which enjoined them "from holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961, until further orders from this Court; and this you will in no wise omit under penalty, etc."

Fields and Lyons were arrested that night where a crowd had gathered across the street from the advertised place of meeting. Fields was making announcements to the crowd and both he and Lyons were distributing copies of "The Tunderbolt," the newspaper of the Party.

The petitioners make two points in brief. They say first that the evidence shows they did not violate the terms of the injunction. There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law; but if the court below misapplies the law to the facts as found by it or there is no evidence to support the finding, a question of law is presented to be reviewed upon the petition for certiorari. *Ex parte Wetzel*, 243 Ala. 130, 8 So. 2d 824.

We now come to the main point argued by petitioners—"that the temporary injunction was void ab initio on account of being contrary to and in violation of both the United States and Alabama Constitutions." This argument is based upon the premise that the ordinance of the City of Fairfield is unconstitutional. We cannot say that it is unconstitutional on its face.

In *Ex parte National Ass'n for Adv. of Colored People*, 265 Ala. 349, 91 So. 2d 214, we said:

> "On the petition for certiorari the sole and only reviewable order or decree is that which adjudges the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review. Certiorari lies to review an order or judgment of contempt for the reason that there is no other method of review in such a case. Ex parte Dickens, 162 Ala. 272, 50 So. 218, 220. Review on certiorari is limited to those questions of law which go to the validity of the order or judgment of contempt, among which are the jurisdiction of the court, its authority to make the decree or order, violation of which resulted in the judgment of contempt. It is only where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained, that the order or judgment will be quashed."

Here, the circuit court had jurisdiction of the parties and the subject matter. It had the authority to make the decree or order, and on its face, the order disobeyed was not void. It is not contended that any procedural requirements were omitted.

In the face of this, petitioners, without moving to dissolve the temporary injunction, seeking a hearing, or in any way contesting the writ, proceeded to meet a crowd gathered across the street from the advertised place of meeting and distributed inflammatory literature.

As a general rule, an unconstitutional statute is an absolute nullity and may not form the basis of any legal right or legal proceedings, yet until its unconstitutionality has been judicially declared in appropriate proceedings, no per-

son charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court; and he may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree, or an application for habeas corpus for release from imprisonment for contempt. *United States* v. *United Mine Workers of America*, 380 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677; *Howat* v. *Kansas*, 258 U. S. 181, 66 L. Ed. 550, 42 S. Ct. 277; *People* v. *Bouchard*, 6 Misc. 459, 27 N. Y. S. 201; *McLeod* v. *Majors*, 5th Cir., 102 F. 2d 128; *Pure Milk Asso.* v. *Wagner*, 363 Ill. 316, 2 N. E. 2d 288.

In the *United Mine Workers* case, supra, the court said:

> "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas*, 258 U. S. 181, 189-190 (1922) this Court said:
>
> > 'An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed

for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

"Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searle*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. * * * "

Under these authorities, petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings.

Affirmed.

Livingston, C. J., Simpson and Harwood, JJ., concur.

[Opinion of the Circuit Court of Jefferson County]

The Court: Well, gentlemen, before I give you my decision, I have a remark or two I would like to make.

First, I don't believe it is the law of this State that you can collaterally attack the constitutionality of an ordinance in a contempt proceeding without first purging yourself of that contempt, if there is any there.

And, second, it has been, either through good luck or the grace of somebody bigger than all of us here in the Bessemer Cut-off, that we have been singularly blessed with not having any race incident here in this area; and, particularly, I think Fairfield has never had one. Back several years ago we did have a movement to move into one of our public parks here but that was straightened out within a matter of a few weeks by the City Attorney for Bessemer and other people. And since that time I don't believe we have had a single clash between the races, either in Bessemer, or Fairfield, or any of the other city—cities of the Bessemer Division of this County. And it is the intention, I know, of the public officials, both of this county and of the various municipalities of the Bessemer Division of this County that we are going to do everything we can to maintain that status quo. We are going to try to keep peace between the races here and we are going to do everything that we can to keep people from agitating trouble.

Getting down to this case here:

While there is no evidence that the pamphlet was redistributed, the writ of injunction says "distribute further handbills, announcing such meetings, as were distributed in the City of Fairfield."

I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully

evading the exact language of the handbill that had been previously distributed.

If these respondents were of the opinion and so advised that these ordinances were unconstitutional they could have filed their motion to dissolve it and had their day in court and the final hearing on this injunction was to have been set down or was set down on November 17th, giving everybody adequate time to prepare their cases to come in and test the constitutionality of these ordinances.

It is my opinion that the ordinances are a legal exercise of the police power of the municipality.

Therefore, Dr. Fields and Mr. Lyons, if you will stand:

It is the judgment of the Court that you are in contempt of this Court and it is the judgment of the Court that you be and are hereby adjudged in contempt and you are fined $50.00.

And as additional punishment you are ordered to be confined in the county jail for five days.

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IN THE

Supreme Court of the United States

October Term, 1962

No. 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

October Term, 1962

No. 566

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

vs.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION TO DISMISS OR AFFIRM

The City of Fairfield, Alabama, a Municipal Corporation, appellee herein, by its counsel, and, under Supreme Court Rule 16, moves this Honorable Court to dismiss with costs the appeal taken to this Court by Appellants, or, in the alternative, to affirm the judgment below, for the following reasons:

1. There is no jurisdiction, under the provisions of Title 28, U. S. Code, Section 1257 (2), for this appeal.

2. There is no substantial federal question presented in this action.

The foregoing reasons are more fully set forth in the statement opposing jurisdiction included herewith.

STATEMENT OPPOSING JURISDICTION

Appellee, believing that there is no jurisdiction, under the United States Code, Section 1257 (2) for this appeal, and that there is no substantial question involved here, files this statement opposing jurisdiction on appeal and in support of its motion included herewith.

STATEMENT OF THE CASE

Around noon of Wednesday, October 11, 1961, Appellant, Fields was served with an injunction (R. 24) issued from the Circuit Court of Jefferson County, Alabama, Bessemer Division, In Equity forbidding him, the National States Rights Party, their servants, agents and employees, from holding a certain meeting scheduled for 8 P. M. that evening and from distributing certain described handbills. Thereafter on that evening about 7:30 P. M. and just prior to the announced meeting time of 8:00 P. M., the Appellants, Fields and Lyons, of the Appellant, National States Rights Party, arrived at the meeting place and spoke to various of the peoples assembled there (R. 16, 22, 25, 27, 49, 54, 60, 62, 63) and passed out copies of the Party's newspaper, Thunderbolt, thereby for all intents and purposes having their announced meeting as though the injunction had never been issued, in complete and contemptuous disregard of the Court and its injunction. They were brought before the Circuit Court of Jefferson County, Alabama, Bessemer Division, In Equity, on the contempt charge and found guilty of the contempt. (R 72.) On certiorari to the Supreme Court of Alabama, reported at 143 So. 2nd 177, the finding of the Circuit

Court in Equity was affirmed. In doing so, the Supreme Court of Alabama said, "Here, the circuit court had jurisdiction of the parties and the subject matter. It had the authority to make the decree or order, and on its face, the order disobeyed was not void." — — "In the face of this, petitioners, without moving to dissolve the temporary injunction, seeking a hearing, or in any way contesting the writ, proceeded to meet a crowd gathered across the street from the advertised place of meeting and distributed inflammatory literature.

DISCUSSION

This case is markedly similar to the case of Howat vs. Kansas, 258 U.S. 181, 66 L. Ed. 550, 42 S. Ct. 272, in which the Court said "An Injunction duly issuing out of a Court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the Court may be, even if the error be in the assumption of the validity of a seeming but void law, going to the merits of the case. It is for the Court of the first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher Court, its orders based on its decisions are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." This proposition was followed in United States vs. United Mine Workers of America, 330 U.S. 258, 91 L. Ed. 884, 67 S. Ct. 677 and by the Alabama Supreme Court in this case, 143 So. 2nd 177. This Court said further in the United States v. United Mine Workers of America case, supra, "In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt." and further, "The interest

of orderly government demands that respect and compliance be given to orders issued by Courts possessed of jurisdiction of person and subject matter. One who defies the public authority and wilfully refuses his obedience, does so at his peril."

It is apparent from the foregoing that the Alabama Supreme Court decided this case on the basis of general law rather than on any consideration of the application of the Federal Constitution. The case of Howat vs. Kansas, supra, is also authority for the following proposition: "Where the record shows that the case was decided and disposed of by the State Court without any consideration of the application of the Federal Constitution to the features of the State Statute of which complaint is made, even if the complained of features are void, if the State Court sustained the contempt proceedings on general law, the Supreme Court cannot consider the Federal question mooted and assigned for error. This proposition was stated a little differently in Cramp vs. Board of Public Instruction of Orange County, Florida, 82 S. Ct. 275, 368 U.S. 278, 7 L. Ed. 2nd 285, "If the State Court judgment rests upon two grounds, one of which is Federal and the other non-Federal in character, the United States Supreme Court does not have jurisdiction of the appeal if the non-Federal ground is independent of the Federal ground and adequate to support the judgment."

CONCLUSION

Appellee respectfully submits that there is a want of jurisdiction herein for an appeal under Title 28, U.S. Code, Section 1257 (2), and respectfully urges that his motion filed herewith be granted.

Respectfully submitted,

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IN THE

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October Term, 1963

No. 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,
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v.

CITY OF FAIRFIELD,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

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28 U. S. C. § 1257(2) 2

IN THE

Supreme Court of the United States

October Term, 1963

No. 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY and ROBERT LYONS,

Appellants,

against

CITY OF FAIRFIELD,

Appellee.

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Supreme Court of Alabama affirming appellants' convictions is reported at—Ala.—, 143 So. 2d 177 and is contained in the Record at pp. 86-90. No opinion was written by the Circuit Court of Jefferson County, but its oral opinion rendered at the time of conviction is contained in the Record at pp. 71-73.

Jurisdiction

Appellants Fields and Lyons were adjudged guilty of criminal contempt on October 12, 1961. The judgment was affirmed and entered by the Alabama Supreme Court on June 14, 1962 (R. 91) and a timely application for rehearing denied on July 12, 1962 (R. 93). Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Alabama on September 10, 1962 (R. 95-97).

and an amendment to the Notice was filed September 18, 1962 (R. 98-99). Execution of sentence was stayed by the Alabama Supreme Court until final disposition by this Court (R. 93-94). Probable jurisdiction was noted on March 18, 1963 (R. 99).

Jurisdiction of this Court rests on 28 U. S. C. § 1257(2).

Constitutional Provisions Involved

UNITED STATES CONSTITUTION

Amendment 1:

> "Congress shall make no law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Amendment 14, Section 1:

> "* * * No State shall * * * deprive any person of life, liberty or property, without due process of law."

The Statutes Involved

GENERAL CITY CODE OF FAIRFIELD, ALABAMA

Sec. 3-4. Handbills, etc.—Distribution on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper handbills, circulars, dodgers or other advertising matter. [Ord. No. 354, § 4 (1957).]

Sec. 3-5. Same—Placing or throwing in automobiles.

It shall be unlawful for any person to distribute in the city any handbill or other similar form of advertising by throwing or placing the same in any automobile or other vehicle within the city. [Ord. No. 354, § 5 (1957).]

Sec. 14-53. Public meetings; permit required.

It shall be unlawful for any person or persons to hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor, to do so. [Ord. No. 184, § 4, 11-9-32.]

Questions Presented

1. Whether Sections 3-4 and 3-5 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on their face or as construed and applied in this case, abridge appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

2. Whether Section 14-53 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on its face or as construed and applied in this case, abridges appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

3. Whether consideration by the Supreme Court of the United States of a challenge on federal grounds to the validity of a municipal ordinance on its face, or as construed and applied, may be precluded where appellants are found in contempt of an ex parte temporary injunction which purports to enforce compliance with the ordinance, and the state court refuses to entertain the merits of the challenge on the procedural ground that appellants "chose to disregard the temporary injunction rather than contesting it by orderly and proper procedure," where the consequence of the state procedural rule is to nullify appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

4. Whether appellants' convictions for contempt, being unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

Appellant Fields is Information Director of the National States Rights Party. Appellant Lyons is Youth Organizer of the Party (R. 58). The Party, which stands for white supremacy and segregation (R. 53), has been on the ballot in Alabama (R. 60).

Sometime prior to Wednesday, October 11, 1961 (R. 44), the Party had handbills distributed in Fairfield which contained the following announcement (R. 42):

WHITE WORKERS
MEETING

*NIGGERS ARE TAKING OVER UNIONS!

*NIGGERS WANT OUR PARKS AND POOLS!

*NIGGERS DEMAND MIXED SCHOOLS!

Communists in NAACP and in Washington say
Whites Have No RIGHTS!
The Nigger gets everything he DEMANDS!

White Supremacy Can be saved
WHITES CAN STOP this second Reconstruction!

Hear Important Speakers From 4 States

Time—8 P. M. Date—Wed. Oct. 11

Place—5329 Valley Road

In Downtown Fairfield, Alabama

ABOVE THE CAR WASH

THUNDERBOLT Mobile Unit Will be Parked Out
Front Sponsored by National States Rights Party

Box 786, Birmingham, Alabama

PUBLIC INVITED

Come and Bring Your Friends

At about 5:00 P. M., Tuesday, October 10, 1961, the day before the scheduled meeting, the Mayor of Fairfield sent a notice to appellant Fields that he had violated a city ordinance which prohibited the distribution of handbills. The Mayor also informed Fields that another ordinance forbade public meetings without a permit (R. 43).

At about 6:00 P. M. the same evening, Fields phoned the Mayor at his home to discuss the issuance of a permit for the meeting (R. 36-38). Fields called the Mayor's office the morning of the following day and made an appointment for 2:00 P. M. that afternoon for further discussion (R. 55). Around noon of that day, however, Fields was served with an injunction (R. 25) forbidding him, the National States Rights Party, their servants, agents and employees, from holding the scheduled meeting and from distributing any handbills announcing the meeting. Fields did not keep his 2:00 P. M. appointment.

The injunction (R. 5-6) was issued on the *ex parte* application of the City of Fairfield. The Bill of Complaint (R. 1-4) alleged, among other things, that the appellants were "distributing handbills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield," that the purpose of the announced meeting "is to create ill will, disturbances, and disorderly conduct between the races," and that the meeting "will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield."

About 7:30 P. M. on the evening of the scheduled meeting, appellants Fields and Lyons arrived at the meeting place to announce that the meeting site had been transferred to the city park at Lipscomb, a nearby town (R. 18,

26, 28, 49, 54, 60, 62, 63).[1] Subsequent to the service of the injunction, no meeting was held in Fairfield (R. 20, 48, 56), no handbills were distributed (R. 20, 24, 28, 44, 47, 54, 64, 72),[2] nor was there any disturbance whatsoever (R. 14, 26-30, 54).

Appellants were arrested for violating the injunction. On the following day, October 12, 1961, after a hearing, each was found in contempt and sentenced to serve 5 days in jail and pay a $50 fine.

The Alabama Supreme Court affirmed the convictions on the ground that the question of a statute's constitutionality may not be raised "in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree * * *"

Summary of Argument

I.

A. Sections 3-4 and 3-5 of the Code of Fairfield, which impose an absolute ban upon the distribution of handbills and circulars, are unconstitutional on their face. *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Schneider* v. *State*, 308 U. S. 147 (1939); *Jamison* v. *Texas*, 318 U. S. 412 (1943); *Talley* v. *California*, 362 U. S. 60 (1960).

B. Section 14-53 of the City Code, which makes it unlawful for anyone to hold a public meeting in Fairfield "without first having obtained a permit from the Mayor to do so," is likewise unconstitutional on its face. *Lovell* v.

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[1] Earlier the same day, appellant Lyons and another person were prohibited by the police from entering the meeting place (R. 34, 50).

[2] Some copies of the Party's newspaper, *Thunderbolt*, were distributed near the original meeting place, but it contained no notice of the Fairfield meeting, nor had its distribution been enjoined. A copy of the newspaper is contained at R. 21.

Griffin, supra; Cantwell v. *Connecticut,* 310 U. S. 296 (1940); *Saia* v. *New York,* 334 U. S. 558 (1948); *Niemotko* v. *Maryland,* 340 U. S. 268 U. S. (1961); *Kunz* v. *New York,* 340 U. S. 290 (1951); *Staub* v. *Baxley,* 355 U. S. 313 (1958). Section 14-53, on its face, is a prior restraint, "a form of infringement upon freedom of expression to be sepecially condemned." *Burstyn* v. *Wilson,* 343 U. S. 495, 504. Emerson, *The Doctrine of Prior Restraint,* 20 L. and Contemp. Prob. 648 (1955). The ordinance does not embody "narrowly drawn, resonable and definite standards for the officials to follow" and has no "definite standards or other controlling guides governing the action of the Mayor * * * in granting or withholding a permit." *Niemotko* v. *Marylond, supra; Staub* v. *Baxley, supra.*

II.

A. The injunction and ordinances, as applied against the distribution of appellants' handbills, violated the rule of law established in *Near* v. *Minnesota,* 283 U. S. 697 (1931). In addition, the appellants were convicted not for violating the explicit terms of the injunction but rather for distributing copies of their newspaper which had not been expressly enjoined.

B. The injunction and ordinances, as applied against the appellants' meeting, even if valid as to a meeting to be held in the street or a public park, are clearly invalid when applied against a meeting to be held in a private hall. *DeJonge* v. *Oregon,* 299 U. S. 353 (1937); *Kunz* v. *New York, supra; Thomas* v. *Collins,* 323 U. S. 516 (1945).

III.

A. The decision of the Alabama Supreme Court that, on the authority of *United Mine Workers* v. *United States,* 330 U. S. 258 (1947), the appellants were foreclosed from challenging the constitutionality of the injunction against

them "in collateral proceedings on appeal from a judgment of conviction for contempt of the * * * decree," is in error. The *Mine Workers* doctrine does not apply where First Amendment rights are concerned. That case revolved around the question of conduct subject to statutory regulation rather than conduct fully protected by the Constitution. Second, it involved the complex problems of statutory interpretation in a factual setting that had not previously received judicial consideration. Third, it was concerned with the problem that arose in the context of an industrial dispute. In addition, *United Gas, Coke & Chemical Workers* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1941), and *In the Matter of Green*, 369 U. S. 689 (1962), further support the view that appellants may not be foreclosed from testing the underlying validity of the injunction simply because they have asserted the right in the course of contempt proceedings.

Even in *Mine Workers* own terms, the injunction in this case was clearly frivolous and could be violated with impunity. All of the Justices in the *Mine Workers* case, except two, expressed the belief that there were circumstances where an order of the court was so frivolous that its violation could not be punished. The facts of this case come within that explicit exception.

B. As an original proposition, the primacy of First Amendment rights requires this Court to hold that the injunction's constitutionality may be tested by violating its terms. Failure to so hold will inevitably result in the suppression of First Amendment rights in a wide variety of circumstances heretofore fully protected. This rule must be adopted both in cases where the injunction and the ordinances on which they are based are clearly invalid, such as here, and in cases where their validity are open to question. No other rule will allow that "free and open encounter" which must be permitted immediately when concern for an issue of public importance is high.

That the municipal authorities thought that violence might erupt were appellants' meeting allowed to take place, does not change the situation. No one can be sure that a scheduled speech will go forward in the manner contemplated or that it will have the effect predicted. When a speaker "passes the bounds of argument or persuasion and undertakes incitement to riot" it is clear that the police can "prevent a breach of the peace." *Feiner* v. *New York*, 340 U. S. 315 (1951); *Rockwell* v. *Morris*, 12 A. D. 2d 272, affirmed 215 N. Y. S. 2d 502, cert. denied 368 U. S. 913. Compare *Kasper* v. *Brittain*, 245 F. 2d 92 (C. A. 6, 1957).

IV.

The convictions violated the due process clause of the Fourteenth Amendment because there was no evidence tending to prove the offense as charged. *Thompson* v. *Louisville*, 362 U. S. 199 (1960); *Garner* v. *Louisiana*, 368 U. S. 157 (1961). There is not a shred of evidence in the record to show that any of the handbills against which the injunction was directed were distributed. Likewise, there is no evidence that the appellants violated the order enjoining them from holding a public meeting in the City of Fairfield. The record clearly shows that "there was no meeting held."

ARGUMENT

I

The sections of the Code of Fairfield involved herein are unconstitutional and void on their face.

A. Sections 3-4 and 3-5 of the City Code.

Section 3-4 of the Code of Fairfield declares it "unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper handbills, circulars, dodgers or other advertising matter". Section 3-5 similarly bans distribution of handbills by placing them in

automobiles. These statutes are almost identical to the statutes passed by the cities of Los Angeles, California, Milwaukee, Wisconsin, and Worcester, Massachusetts, and held unconstitutional in *Schneider* v. *State*, 308 U. S. 147 (1939). Each of the statutes there involved also placed an absolute prohibition upon the distribution of handbills on streets, sidewalks or parks of each of the respective municipalities. The Los Angeles Muncipal Code eaxmined in *Schneider* also forbade the placing of handbills in automobiles or vehicles just as § 3-5.

The Court through Justice Roberts declared that the statutes were unenforceable against the petitioners, each of whom had distributed leaflets on the public streets of the municipalities involved. The Court dismissed the respondents' argument that the statutes were a valid exercise of police power to prevent littering of the streets:

> "We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst them is the punishment of those who actually throw papers on the streets." 308 U. S. at 162.

Similarly, *in Jamison* v. *Texas*, 318 U. S. 412 (1943), an absolute prohibition against the distribution of handbills was held unconstitutional as applied to a member of Jehovah's Witnesses who distributed handbills announcing a meeting of her group to hear an address by one of its leaders; and in *Talley* v. *California*, 362 U. S. 60, 65 (1960), a municipal ordinance which forbade the distribution of

handbills which did not bear the names of the persons who prepared, distributed or sponsored them was also held unconstitutional and "void on its face."

A statute is void on its face if it is so comprehensive that it forbids or punishes the normal and ordinary dissemination of information or is "not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets." *Lovell* v. *Griffin*, 303 U. S. 444, 451 (1938).

There is ample justification for declaring unconstitutional under all circumstances sweeping prohibitions against free speech and any punishment for violating these prohibitions. In one of its earlier free-speech cases, this Court said:

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which on its face, and as authoritatively construed, is so vague and indefinite to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." *Stromberg* v. *California*, 283 U. S. 359, 369 (1931).

Similarly, this Court stated in *Terminiello* v. *Chicago*, 337 U. S. 1, 4-5 (1949):

> "A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance as an idea. That is why freedom of speech • • • is • • •

> protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. * * * There is no room under our constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislature, courts or dominant political or community groups."

The limited areas in which restrictions on free speech are constitutionally permitted are more adequately covered by specific statutes dealing with specific evils which can be constitutionally restricted. "There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence." *Kunz* v. *New York*, 340 U. S. 290 (1951). Thus it follows that any comprehensive statute absolutely forbidding the dissemination of information must fall even without an inquiry as to its application in a particular case. If construed to cover only obscene literature and disorderly conduct, it is unnecessary.[3] If construed to cover more than these areas, it is invalid because of its repressive effect on constitutionally protected activity.

B. Section 14-53 of the City Code.

Section 14-53 of the General City Code of Fairfield makes it "unlawful" for anyone "to hold a public meeting" in Fairfield "without first having obtained a permit from the mayor to do so." A cursory examination of the ordinance shows quite clearly that it also "is invalid on its

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[3] It is clear that it is the function of the state courts to construe such statutes as being so limited. Unless the state court has restricted the application of the statute to these situations, this Court will assume that it is to be applied as written (*i.e.*, to cover all dissemination of information). See *Niemotko* v. *Maryland*, 340 U. S. 268 (1951); *Staub* v. *Baxley*, 355 U. S. 313 (1958). No restrictive limitations have been read into the Fairfield code by the Alabama courts. To the contrary, the Alabama Supreme Court, in this case, found them constitutional as written (R. 88).

face" (*Staub* v. *Baxley*, 355 U. S. 313, 321 (1958)) since it "makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official * * * by requiring a permit or license which may be granted or withheld in the discretion of such official" (*id.* at 322). It therefore imposes "an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." *Ibid.*; accord, e.g. *Cantwell* v. *Connecticut*, 310 U. S. 296, 305 (1940); *Kunz* v. *New York*, 340 U. S. 290, 293 (1951); *Lovell* v. *Griffin*, 303 U. S. 444, 451 (1938); *Niemotko* v. *Maryland*, 340 U. S. 268, 273 (1951); *Saia* v. *New York*, 334 U. S. 558, 559-60 (1948).

This Court has consistently considered a system of prior restraint as a more serious violation of the First Amendment than a system of subsequent punishment. As the Court stated in *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 504 (1952): "This Court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned. *Near* v. *Minnesota*, 283 U. S. 697 (1931)." See also *Kunz* v. *New York*, 340 U. S. 290, 294-95 (1951). And as it further stated in *Bantam Books* v. *Sullivan*, 9 L. Ed. 2d 584, 593 (1963): "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." Accord, e.g., *Schneider* v. *State*, 308 U. S. 147, 164 (1939).

The reasons why prior restraints have received special constitutional condemnation have been eloquently discussed by members of this Court on previous occasions and need not be elaborated upon in any great detail. See, e.g., *Times Film Corp.* v. *Chicago*, 365 U. S. 43, 50 (1961) (dissenting opinion). Suffice it merely to quote a few select passages from the landmark article on the subject—Emerson, *The Doctrine of Prior Restraint*, 20 L. & Contemp. Prob. 648 (1955):

> "[1] A system of prior restraint * * * subjects to government scrutiny and approval *all* expression

in the area controlled—the innocent and borderline as well as the offensive, the routine as well as the unusual [p. 656]."

"[2] Under a system of prior restraint, the communication, if banned, never reaches the market place [of ideas] at all [p. 657]."

"[3] A system of prior restraint is so constructed as to make it easier, and hence more likely, that in any particular case the government will rule adversely to free expression [*ibid.*]."

"[4] Under a system of prior restraint, the issue of whether a communication is to be suppressed or not is determined by an administrative rather than a criminal procedure [*ibid.*]."

"[5] A system of prior restraint usually operates behind a screen of informality and partial concealment that seriously curtails opportunity for public appraisal and increases the chances of discrimination and other abuse [p. 658]."

"[6] Perhaps the most significant feature of systems of prior restraint is that they contain within themselves forces which drive irresistibly toward unintelligent, overzealous, and usually absurd administration [*ibid.*]."

"[7] [A] system of prior restraint * * * means, under most circumstances, less rather than more communication of ideas; it leaves out of account those bolder individuals who may wish to express their opinions and are willing to take some risk; and it implies a philosophy of willingness to conform to official opinion and a sluggishness or timidity in asserting rights that bodes ill for a spirited and healthy expression of unorthodox and unaccepted opinion [p. 659]."

"[8] A system of prior restraint is, in general, more readily and effectively enforced than a system of subsequent punishment. * * * A penal proceeding to enforce a prior restraint normally involves only a limited and relatively simple issue—whether or

not the communication was made without prior approval [*ibid.*]."

This Court has recognized, however, that a general and nondiscriminatory piece of legislation which merely regulates "the times, the places, and the manner of soliciting upon streets, and of holding meetings thereon" (*Cantwell* v. *Connecticut*, *supra* at 304) will be upheld as a valid regulatory statute (see, *e.g.*, *Cox* v. *New Hampshire*, 312 U. S. 569 (1941); *Kovacs* v. *Cooper*, 336 U. S. 77 (1949)). The general theory behind the upholding of this type of statute is that streets, parks and other public places may be reasonably regulated for the general interest, comfort and convenience of all the citizenry or in consonance with the peace, good order and public safety of the community. See, *e.g.*, *Hague* v. *C.I.O.*, 307 U. S. 496, 515 (1939); *Lovell* v. *Griffin*, *supra* at 451.

If, however, a statute does not embody "narrowly drawn, reasonable and definite standards for the officials to follow" (*Niemotko* v. *Maryland*, *supra* at 271), if a statute has no "definitive standards or other controlling guides governing the action of the Mayor and Council in granting or withholding a permit" (*Staub* v. *Baxley*, *supra* at 322), it does not come within the exception to the general rule and must be struck down as an unconstitutional prior restraint. Since Section 14-53 of the Fairfield Code prohibits the holding of public meetings "of any kind at any time, at any place, and in any manner without a permit from the * * * [mayor]" (*Lovell* v. *Griffin*, *supra* at 451), it cannot be saved from unconstitutional invalidity. Moreover, since "the ordinance is void on its face, it was not necessary for appellant to seek a permit under it." *Lovell* v. *Griffin*, *supra* at 452-53.

II

The ordinances and the injunction issued pursuant to them are unconstitutional as applied.

What is particularly aggravating about the present case is that, not only were the defendants absolutely prohibited by Section 3-4 and 3-5 of the Fairfield Code from distributing their handbills announcing the meeting and prohibited by Section 14-53 from holding the meeting without permission from the mayor, but they were also enjoined in advance by the issuance of a temporary injunction "from holding a public meeting * * * as announced, and from distributing further * * * handbills announcing such meeting such as were [previously] distributed * * * " (R. 6).

We have already noted (*supra*, Part IB) that, with certain limited exceptions, administrative prior restraints are unconstitutional, being considered "as a form of infringement upon freedom of expression to be especially condemned" (*Joseph Burstyn, Inc.* v. *Wilson*, *supra* at 504). Judicial prior restraints are to be sanctioned no more than administrative ones. See, *e.g.*, *Near* v. *Minnesota*, *supra*; *Thomas* v. *Collins*, 323 U. S. 516 (1945).

A. Sections 3-4 and 3-5 of the City Code.

The injunction against the distribution of the handbills was a particularly noxious constitutional violation in view of the rule of law established in *Near* v. *Minnesota*, *supra*. In that case, the state court enjoined the defendants from issuing "any publication whatsoever which is a malicious, scandalous or defamatory newspaper, as defined by law" (283 U. S. at 706). The Supreme Court held the statute and injunction to be a prior restraint abridging the freedom of the press. Chief Justice Hughes, speaking for the majority, stated that "the statute in question does not deal with punishments; it provides for no punishment, ex-

cept in cases of contempt for violation of the court's order, but for suppression and injunction, that is, for restraint of publication" (*id.* at 715). The Chief Justice went on to enunciate the doctrine of prior restraint as applied to the freedom of the press (*id.* at 716):

> "The exceptional nature of its limitations places in a strong light the general conception that liberty of the press, historically considered and taken up by the Federal Constitution, has meant principally, although not exclusively, immunity from previous restraints and censorship."

See *Joseph Burstyn, Inc.* v. *Wilson, supra* at 504. The Court further noted that "the immunity of the press from previous restraint" was not made less necessary by the fact that "miscreant purveyors of scandal" may abuse the freedom of the press. Quite the contrary, "subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege" (*id.* at 720). Cf. *Kunz* v. *New York, supra* at 294-95. When, as in the present case, an injunction issues to prevent the distribution of literature, and especially when that injunction is pursuant to an unconstitutional statute, the injunction must be considered invalid as a prior restraint unconstitutionally infringing on the appellants' freedom of press.

Indeed, in the present case, the violation is all the more serious since the trial court explicitly found that there was "no evidence that the pamphlet was distributed" (R. 72). What the court in fact acknowledged was that the defendants had distributed copies of their newspaper, *The Thunderbolt* (see R. 21), which had not been expressly enjoined. Although it was admitted that there was no announcement of the meeting in the issue distributed (see R. 23, 25), the court held that the newspaper "was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed" (R.

72). Thus, the high order of protection conferred by the Constitution on the freedom of the press was arrantly disregarded. Indeed, even if Sections 3-4 and 3-5 had been constitutional on their face and even if the injunction against the original handbills had been valid, the Statute and injunction would have had to be declared unconstitutional as applied in the present case since, unlike even the statute in *Kingsley Books, Inc.* v. *Brown*, 354 U. S. 436, 445 (1957), they failed to withhold "restraint upon matters not already published and not yet found to be offensive."

B. Section 14-53 of the City Code.

The reasons for invalidating Section 14-53 of the Fairfield Code as an unconstitutional prior restraint (see *supra*, part I B) are equally applicable for purposes of invalidating the injunction issued pursuant to the ordinance.

The record here is barren of evidence of any danger of violence, even is such evidence were relevant. See Part III (B) (3), *infra*. The plaintiff's bill of complaint contains no factual allegations to support its conclusions that the purpose of the meeting was "to create ill will and disturbances between the races," and that it "will constitute a public nuisance, injurious to the health, comport, or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt the peace and good order in the City of Fairfield" (R. 2). The record clearly shows that a meeting held by the defendants on the previous evening had been "a very peaceable, normal meeting" (R. 47). Moreover, the police officer who arrested appellant Fields admitted that there was no disturbance of any kind at the site of the scheduled meeting either before or at the time of the arrest. He further testified that he did not see Dr. Fields fight with anyone, that there was "no trouble at all" and that the entire situation was "very peaceful" (R. 19).

Even if the prior restraint had been valid as to a meeting held in the street or a public park it could hardly have been

applicable to a meeting of the National States Rights Party —a political party—which was to be held in a private hall, "above the Car Wash" (R. 4). See *Kunz* v. *New York*, *supra* at 307 (Jackson, *J.*, dissenting). This Court has consistently circumscribed the power asserted by a State to prohibit a peaceful public meeting held in a private hall merely because the purpose of the meeting was disagreeable to the government.

Thus, for example, in *De Jonge* v. *Oregon*, 299 U. S. 353 (1937), De Jonge's "sole offense as charged * * * was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party" (299 U. S. at 362). The Court, holding the conviction repugnant to the due process clause of the Fourteenth Amendment, said (*id.* at 365):

> "The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which a meeting is to be held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge."

Similarly, in *Thomas* v. *Collins*, 323 U. S. 516 (1945), an official of a labor union was held in contempt of a restraining order—issued *ex parte*, as here—that forbade him from violating a Texas statute regulating the solicitation of membership in trade unions. The order was issued in anticipation

of a meeting at which the appellant was scheduled to speak. He appeared and spoke at the meeting, and was held in contempt. The Court, holding that the statute contravened the First Amendment, stated, (323 U. S. at 536):

> "The assembly was entirely peaceable, and had no other than a wholly lawful purpose. The statements forbidden were not in themselves unlawful, had no tendency to incite to unlawful action, involved no element of clear and present, grave and immediate danger to the public welfare. * * * We have here nothing comparable to the case where use of the word 'fire' in a crowded theater creates a clear and present danger which the State may undertake to avoid or against which it may protect. *Schenck* v. *United States*, 249 U. S. 47."

What was thus involved was the basic right of freedom of expression which could not be circumscribed. As the Court explained (*id.* at 540):

> "If the exercise of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. * * * We think that a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment."

The holdings in *De Jonge* and *Thomas* have direct applicability here. The sentencing court revealed quite candidly the true purpose for issuing the restraining order. As it stated (R. 72):

> "Back several years ago we did have a movement to move into one of our public parks here but that

> was straightened out within a matter of a few weeks. * * * And it is the intention, I know, of the public officials * * * that we are going to do everything we can to maintain that status quo. We are going * * * to do everything that we can to keep people from agitating trouble."

Since, however, a State "may not suppress free communication of views * * * under the guise of preserving desirable conditions" (*Cantwell* v. *Connecticut, supra* at 308), the court order, pursuant to Section 14-53, enjoining the meeting from taking place, was clearly an unconstitutional prior restraint. We believe that a municipality has *no* power to grant or deny the right to meet on private property except as to non-discriminatory regulations intended to control structural or fire hazards—which is not to say it has not the power to invoke the criminal law for valid offenses committed on the private premises. See Part III(B)(3), *infra*.

III

Appellants were not foreclosed from testing the injunction's constitutionality by violating its terms.

It was the view of the Alabama Supreme Court that, on the authority of *United Mine Workers* v. *United States*, 330 U. S. 258 (1947), the appellants were foreclosed from challenging the constitutionality of the injunction against them "in collateral proceedings on appeal from a judgment of conviction for contempt of the * * * decree" (R. 89). The court's reliance on *Mine Workers* is misplaced.

Although Alabama may, if it chooses, adhere to *Mine Workers* as a matter of state law in a variety of cases, its reliance on the doctrine of that case where First Amendment rights are concerned cannot be sustained. We point out below (A) that the *Mine Workers* doctrine, by its own terms, has no application to free speech cases in general,

and (B) that *Mine Workers* aside, this Court must find that appellants have the right to attack the constitutionality of both the ordinances and injunction in the course of contempt proceedings.

A. The *Mine Workers* doctrine does not apply to First Amendment cases.

Mine Workers involved at least three essential elements which are absent here. First, *Mine Workers* revolved around a question of conduct subject to statutory regulation rather than conduct fully protected by the Constitution. Second, it involved a complex problem of statutory interpretation[4] in a factual setting that had not previously received judicial consideration. Third, it was concerned with a problem that arose in the context of an industrial dispute.

In the instant case, the subject matter of the dispute is plainly protected by the Constitution—more particularly, the First Amendment which deals with "preferred rights." The qualitative distinction between conduct which may be regulated by statute and conduct which is specially protected by the Constitution, is pointed out in *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639 (1943):

> "The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

Second, there is no substantial doubt to be resolved either about the scope of the rights asserted here or about

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[4] The Norris-LaGuardia Act, 47 Stat. 70, c. 90, 29 U. S. C. § 101.

the invalidity of the ordinances in question. The rights are clearly protected and the ordinances patently unconstitutional. See Parts I and II, *supra*. Although this case, like *Mine Workers*, has evoked "extended argument, lengthy briefs, [and] study and reflection," to use Mr. Justice Frankfurter's words (330 U. S. at 310), those exertions have been forthcoming not because they are necessary "before final conclusions could be reached regarding the proper interpretation of the legislation controlling this case," but merely to demonstrate that those conclusions regarding the First Amendment have been reached by this Court long ago.[5]

Third, where industrial conflicts are concerned, this Court has frequently set such cases apart from the mainstream of First Amendment cases even though, in one respect or another, they contain elements of speech, assembly or press.[6] But where political liberty is concerned—and we remind the Court that the association which is one of the appellants here is a political party—the limitations that may be imposed on union activity have no application whatsoever. This is particularly the case where

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[5] Compare Mr. Chief Justice Vinson's observation that:

> "We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the Court; where the elements of federal jurisdiction were clearly shown; and where the authority of the Court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were *subject to substantial doubt*." 330 U. S. at 294 (emphasis supplied)

Mr. Justice Frankfurter described the issue in the case as "complicated and novel." 330 U. S. at 310.

[6] See, for example, *Local Union 10* v. *Graham*, 345 U.S. 192 (1953); *Hughes* v. *Superior Court*, 339 U. S. 460 (1950); *Building Service Employees* v. *Gazzam*, 339 U. S. 532 (1950); *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490 (1949); *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722 (1942).

the rights asserted by the party are not only of constitutional dimension, but where they are without question fully protected by the Constitution as well.

In addition, two cases decided since *Mine Workers* further support the view that appellants may not be foreclosed from testing the underlying validity of the injunction simply because they have asserted the right in the course of contempt proceedings.

In *United Gas, Coke and Chemical Workers* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951), petitioners had been prohibited from striking by an ex parte restraining order under the terms of the Wisconsin Public Utility Anti-Strike Law, and found in contempt.

This Court reversed. It found that Congress, under the National Labor Relations Act of 1935 as amended, had occupied the field of peaceful strikes for higher wages in the industry the state sought here to regulate. *Mine Workers* is not to be found in the majority or dissenting opinions.

In *In the Matter of Green*, 369 U. S. 689 (1962), Green was an attorney representing a labor union. A labor-management controversy arose and the employer obtained an injunction from the Ohio state courts forbidding union members from picketing. The injunction was issued ex parte. Green believed the order was invalid because issued without a hearing required by state statute and because the controversy was properly one for the National Labor Relations Board. Consequently, he advised the union officials that the restraining order was invalid and that the best way to contest it was to continue picketing and, if the pickets were held in contempt, to appeal and test the order of commitment by habeas corpus.

The plan was followed and four pickets were arrested. At the hearing on the contempt charge, Green informed the

court that it was he who had advised the union to test the injunction by risking contempt. He was held in contempt for disobeying "a lawful writ, process, order, rule, judgment, or command, of the court under the Ohio statutes."

This Court reversed. It held that "a state court is without power to hold one in contempt for violating an injunction that the state court had no power to enter by reason of federal preemption." 369 U. S. at 692. The case was remanded for a hearing to determine whether the state court was acting in a field reserved exclusively by Congress for the federal agency. *Mine Workers* was distinguished on the ground that it "involved a restraining order of a federal court and presented no question of preemption of a field by Congress where, if federal policy is to prevail, federal power must be complete." Id. note 1.[7]

United Gas and *Green* both indicate that when a state court's power to issue an injunction in a labor dispute has been withdrawn by Congress, which vested an administrative agency and the federal courts with authority to act in that area, an injunction issued by a state court which has presumed to exercise its jurisdiction may be disobeyed. *A fortiori*, when the power of a state court to act is foreclosed by the Constitution as in this case, any injunction which it issues may likewise be disobeyed with impunity.[8]

1. *Even in Mine Workers own terms, the injunction in this case was clearly frivolous and could be violated with impunity.*

Although Mr. Chief Justice Vinson's opinion in *Mine Workers* nominally held that even if the restraining order

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[7] Cf. *NAACP* v. *Alabama*, 357 U. S. 449 (1958).

[8] Prior to *Mine Workers*, of course, this Court had held that the validity of judicial orders could be collaterally tested by violating them. *Ex Parte Rowland*, 104 U. S. 604 (1882); *Ex Parte Fisk*, 113 U. S. 713 (1885); *Ex Parte Ayers*, 123 U. S. 443 (1887); *In Re Sawyer*, 124 U. S. 200 (1888).

were found invalid, its validity could not be tested by violating its terms,[9] he added that, "A different result would follow were the question of jurisdiction frivolous and not substantial * * *" 330 U. S. at 293.

Mr. Justice Frankfurter, who held that the restraining order in *Mine Workers* could not be disobeyed even though invalid (as he believed it to be), also declared that a different result would follow if the question of jurisdiction were frivolous. He compared the questions presented in the case before him with "a question so frivolous that any judge should have summarily thrown the Government out of court without delay" 330 U. S. at 309.

> "Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper. Short of an indisputable want of authority on the part of a court, the very existence of a court presupposes its power to entertain a controversy, if only to decide after deliberation that it has no power over the particular controversy.
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> "To be sure, an obvious limitation upon a court cannot be circumvented by frivolous inquiry into the existence of a power that has unquestionably been withheld. Thus, the explicit withdrawal from federal district courts of the power to issue injunc-

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[9] The Chief Justice and the two Justices who joined in his opinion, believed the order valid. Though they went on to declare that even if the order were void the defendants were none the less required to obey it, that much of their opinion was unnecessary to their decision and therefore not binding. Justices Black and Douglas likewise found the order valid, but therefore thought it unnecessary to decide the academic problem of a void order. Justices Murphy and Rutledge concluded both that the order was void and the contempt conviction therefore invalid. Only Justices Frankfurter and Jackson held the contempt conviction valid even though the order on which it was based was, in their opinion, invalid. Thus, of nine Justices writing five opinions, only Justices Frankfurter and Jackson squarely adopted the proposition relied upon by the Alabama Supreme Court.

> tions in an ordinary labor dispute between a private employer and his employees cannot be defeated, and an existing right to strike therefore impaired, by pretending to entertain a suit for such an injunction in order to decide whether a court has jurisdiction. In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power." 330 U. S. at 309-310 [10]

No member of the *Mine Workers* Court undertook to supply a precise definition of a frivolous void order. It is enough for the purposes of this case that the injunction under scrutiny, being so patently violative of appellants' First Amendment freedoms, be declared a nullity from start to finish. The injunction was an assertion of power based upon ordinances which, as we have shown above, are not arguably constitutional. In addition, the power not only was asserted to intrude upon the preferred constitutional rights of free speech, free press and free assembly, it presumed to do so in the form of a prior restraint, a particularly objectionable kind of censorship. See *Congress of Racial Equality* v. *Douglas*, 318 F. 2d 95 (C. A. 5, 1963).

B. The primacy of First Amendment rights requires this Court to hold that the injunction's constitutionality may be tested by violating its terms.

1. The injunction lays a forbidden burden on First Amendment Rights.

Although we have discussed *Mine Workers* in order to meet the Alabama Supreme Court on its own ground, we

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[10] All the Justices except two expressed the belief that there were circumstances where an order of a court was so frivolous that its violation could not be punished. Justices Black and Douglas, the exceptions, expressed no view because, believing the *Mine Workers* order valid, they declined to speculate on the consquences of violating a void order.

believe as an original proposition that the doctrine of that case has no place in First Amendment cases.[11]

Professor Paul Freund, in discussing the differences (and similiarities) between prior restraint and subsequent punishment, notes one particularly crucial difference where restraining orders or temporary injunctions are concerned:

> "If disobedience of the interim order is *ipso facto* contempt, with no opportunity to escape by showing the invalidity of the order on the merits, the restraint does indeed have a chilling effect beyond that of a criminal statute.[12]

It is precisely that "chilling effect" which is at stake in this case.

The consequence of investing court orders, no matter how void or oppressive, with impenetrable sanctity,[13] is

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[11] The three principal commentators on *Mine Workers* think it unworkable in any case. Watt, the Divine Right of Government by Judiciary, 14 Univ. of Chicago Law Rev. 409 (1947); Cox, The Void Order and the Duty to Obey, 16 Univ. of Chicago Law Rev. 86 (1948); Chafee, Some Problems of Equity (Univ. of Mich. Law School, 1950) Chapters VIII and IX.

[12] The Supreme Court and Civil Liberties, 4 Vanderbilt Law Rev. 533, 539 (1951). Professor Freund goes on to say:

> "To the extent, however, that local procedure allows such a defense to be raised in a contempt proceeding, the special objection to prior restraint growing out of the problem of interim activity is obviated."

We agree, but it is our fundamental thesis that the question of collateral attack is not just a matter of "local procedure."

[13] To the extent that *Mine Workers* may be based upon the respect due the courts, that consideration must give way under the circumstances of this case. This is the very situation anticipated by Mr. Justice Frankfurter when he spoke of a court "so obviously traveling outside its orbit that it is merely usurping judicial forms and facilities."

The "orbit" referred to is the traditional function of courts, but the acts of the Circuit Court in this case clearly go beyond that

made plain in this case. It is beyond question that the appellants could not have been punished for distributing their newspaper and holding their meeting if they had been prosecuted directly under the ordinances in issue; and the unconstitutionality of those ordinances could have properly been raised as a defense. *Staub* v. *Baxley, supra.* But the City of Fairfield, by interposing a temporary injunction between appellants and the same ordinances, has devised a method that, if ratified by this Court, will allow circumvention of the *Staub* doctrine and confer on the states a technique to nullify the precise purpose the First Amendment is intended to serve—full discussion of all matters of public concern, which Mr. Justice Brandeis called "a political duty." [14]

Public issues are frequently short run, and if the government were empowered to suppress discussion by the use of an injunction, issued as here on the flimsiest grounds, the purpose of the discussion may well have passed by the time the appellate remedies were exhausted. For example, it would enable a political candidate to be enjoined from speaking during the campaign period preceding the day of election. If he violated the injunction he would be imprisoned; if he bowed to the injunction and tested its validity in "orderly and proper proceedings," the election will have long been over. In either case, the electorate would not

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function. That is, the decision by the Circuit Court—that the state of events was such that public order would best be maintained by prohibiting appellants' meeting—is a decision to be made, if ever, by the police. See, e.g., *Feiner* v. *New York*, 340 U. S. 315 (1951). But conceding that the States may empower their courts to make such police-type decisions (see *Kingsley Books* v. *Brown*, 354 U. S. 436 (1957)), the States must also be prepared to have the decisions of their courts subject to the same scope of review as the decision of the police in *Feiner*.

[14] *Whitney* v. *California*, 274 U. S. 357, 376 (1927) (concurring opinion).

have heard him and the electoral process—perhaps the raison d'être of free speech—would be crippled.[15]

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[15] The increasing reliance on *ex parte* preliminary injunctions—and the threat they pose to the First Amendment—is indicated by the following examples.

In April 1962, an Alabama Circuit Court Judge issued a temporary injunction against the President, student body and faculty of Talladega College, members of the Student Non-Violent Coordinating Committee, the Congress of Racial Equality, and several individuals, forbidding the respondents from "engaging in, sponsoring or encouraging unlawful street parades, unlawful demonstrations, unlawful boycotts, unlawful trespass, and unlawful picketing." *State of Alabama* v. *Arthur D. Gray, et al.*, Circuit Court of Talladega County, in Equity, No. 9760.

A few days before election day in 1962, a judge of the California Superior Court issued a temporary restraining order prohibiting the distribution of a booklet which "implied that Governor Edmund G. Brown and other Democratic incumbents were soft on communism." A hearing on the injunction was set for November 7th, the day after election day. *New York Times*, October 30, 1962, p. 22. On November 9th, the Democratic State Committee, the plaintiffs, agreed to the dissolution of the restraining order. At the same time Mr. Richard Nixon's campaign manager asked for the dissolution of a restraining order that had been issued prohibiting distribution of two anti-Nixon pamphlets. *New York Times*, November 10, 1962.

On November 29, 1962 a Justice of the New York State Supreme Court issued a temporary restraining order prohibiting Herbert Aptheker from addressing the student body of the University of Buffalo on the ground that Aptheker was a member of the National Committee of the Communist Party, *New York Times*, November 30, 1962.

On April 10, 1963, an Alabama Circuit Court Judge issued a temporary injunction prohibiting anti-segregation demonstrations in Birmingham. Dr. Martin Luther King and others were arrested two days later for violating the injunction. *New York Times*, April 23, 1963, p. 20. Their convictions are now on appeal to the Alabama Supreme Court.

In Tallahassee, Florida, a Circuit Court Judge issued a temporary restraining order on May 29, 1963 prohibiting anti-segregation demonstrations. Two hundred and fifty-seven demonstrators

It was danger of this magnitude that Mr. Justice Rutledge foresaw in his prophetic dissent in *Mine Workers*:

> "It would also be in practical effect for many cases to terminate the litigation, foreclosing the substantive rights involved without any possibility for their effective appellate review and determination.
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> "This would be true, for instance, wherever the substantive rights asserted or the opportunity for exercising them would vanish with obedience to the challenged order. Cf. *Ex Parte Fisk*, 113 U. S. 713. The First Amendment liberties especially would be vulnerable to nullification by such control. Thus the constitutional rights of free speech and free assembly would be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This Court has refused to countenance a view so destructive of the most fundamental liberties. *Thomas v. Collins*, 323 U. S. 516. These and other constitutional rights would be nullified by the force of invalid orders issued in violation of the constitutional provisions securing them, and void for that reason. The same thing would be true also in other cases involving doubt, where statutory or other rights asserted or the benefit of asserting them would vanish, for practical purpose, with obedience." 330 U. S. at 352.

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were arrested on May 30 for violating the order. *New York Times*, May 31, 1963, p. 1.

On June 6, 1963, a Mississippi Chancery Court Judge issued a temporary injunction barring civil rights demonstrations in Jackson. Thirteen local and national civil rights leaders, the NAACP, CORE, and the trustees of Tougaloo Christian College were specifically named in the order. *New York Times*, June 7, 1963, p. 14.

For an account of the destruction by injunction of a dissident political movement, the International Workers of the World, see Chafee, Free Speech in the United States (Harvard University Press, 1946) 326-342.

> "Then also the liberties of our people would be placed largely at the mercy of invalid orders issued without power given by the Constitution and in contravention of power constitutionally withheld by Congress." 330 U. S. at 354.

By obtaining an *ex parte* injunction, and punishing for contempt, the respondents have attempted to convert otherwise unconstitutional and void statutes into ones which can successfully restrain and punish activities which would be protected in the other situations described. However ingenious the City of Fairfield may be, it cannot punish appellants' constitutionally protected behavior. See *Thomas* v. *Collins*, 323 U. S. at 540.[16]

2. Even if the ordinances or injunction here were arguably constitutional, their validity could be tested in contempt proceedings.

We urge, of course, that the ordinances in issue are undeniably invalid on their face. But even if the ordinances or injunction were arguably constitutional, that would not alter appellants' right to test their validity in a contempt proceeding. In any case involving the First Amendment it is irrelevant how the municipal authorities presume to suppress speech or assembly. Whether it be by punishment for not seeking a permit if one is ostensibly required (*Staub* v. *Baxley*, *supra*), or by contempt for violating an injunction against such speech or dissemination (*Thomas* v. *Collins*, *supra*), the result must be the same. The focus must be upon the activity sought to be engaged in, not the state's procedural scheme.

The only restrictions on speech or assembly which a state or municipality can impose in consonance with the

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[16] *Kingsley Books* v. *Brown*, 354 U. S. 436 (1957) is not to contrary. Though it upheld an injunctive scheme for the suppression of obscene publications, it expressly left open the question whether the issue of obscenity could be tested by violating the injunction. 354 U. S. at 443, n. 2.

preferred status of the First Amendment freedoms are general and non-discriminatory regulations dealing with soliciting and holding meetings upon the streets, parks and public places of a town or city. The most that a municipality can require even in this area is that an individual or group request a permit for use of the public street or parks so that the authorities can determine whether a conflicting meeting was scheduled. See Parts I and II, *supra*.

If a permit is wrongfully refused, the meeting or solicitation must be allowed notwithstanding, and a plenary examination of the basis of the refusal—including the constitutionality of applicable statutes—will subsequently be allowed in the courts. See the cases related in *Staub* v. *Baxley*, *supra* at 323-324, notes 6-12.[17] *A fortiori*, no injunction can be issued which would force a postponement of the speech or solicitation until the validity of the injunction has been determined. To proceed in the face of an injunction or a refusal to issue a permit is the only way to prevent circumvention of First Amendment privileges by overzealous officials bent on "maintain[ing] the status quo" (R. 72).[18]

Milton wrote in Areopagitica:

> "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the fields,

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[17] Insofar as *Poulos* v. *New Hampshire*, 345 U. S. 395 (1953) suggests the contrary, it has been overruled by *Staub*. Any rule that would permit municipalities to forbid a speech or assembly and force prior adjudication of the right, is inconsistent with the Fourteenth Amendment.

[18] See *State ex rel. Liversey* v. *Judge of Civil District Court*, 34 La. Ann. 741 (La. Sup. Ct., 1882); *Ex Parte Tucker*, 110 Tex. 335, 220 S. W. 75 (Tex. Sup. Ct., 1920); *State* v. *Morrow*, 57 Ohio App. 30, 11 N. E. 2d 273 (Ohio Ct. of App., 1937); *Ex Parte Henry*, 147 Tex. 315, 215 S. W. 2d 588 (Tex. Sup. Ct., 1948), each of which recognizes that the First Amendment can be served only by allowing an injunction to be attacked in the course of contempt proceedings.

> we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehead grapple; who ever knew Truth put to the worse in a free and open encounter?"

If these words are to have any force in the present day, the "free and open encounter" must be permitted immediately when public concern is high and can be directed against the falsehood or injustice revealed by the speech. The headlines of one day are forgotten the following week and if the full truth about any public issue is to come before the public, all parties with something to say must have the same immediate opportunity to present their views.

3. Nor is speculative violence justification for supressing appellants' meeting.

Even if the municipal authorities thought that violence would erupt were a permit to be issued, and secured an injunction or refused a permit on that basis, the meeting must be allowed to proceed. No one can be sure that the speech that is scheduled will go forward in the manner contemplated or that it will have the effect predicted.

> "A community need not wait to be subverted by street riots and storm troopers; but, also, it cannot, by its policemen or commissioners, suppress a speaker, in prior restraint, on the basis of news reports, hysteria or inference that what he did yesterday, he will do today. Thus, too, if the speaker incites others to immediate unlawful action he may be punished in a proper case, stopped when disorder actually impends; but this is not to be confused with unlawful action from others who seek unlawfully to suppress or punish the speaker. *Matter of Rockwell* v. *Morris*, 12 A. D. 2d 272, 281 (1st Dept. 1961), aff'd 215 N. Y. S. 2d 502 (1961), cert. denied 368 U. S. 913 (1961).

When a speaker "passes the bounds of argument or persuasion and undertakes incitement to riot" it is clear that the police can "prevent a breach of the peace," *Feiner*

v. *New York*, 340 U. S. 315, 320-21 (1951). It is at that point and not before that municipal and state authorities can act. And there is no doubt that they have the means to act effectively when that point is reached.[19]

Speech often rouses to anger, and the public's concern with social and political issues may often reach a disturbing pitch. It is easy for a municipal officer to equate the public order with the status quo and political agitation with a breach of the peace. As Learned Hand wrote during World War I:

> "Political agitation, by the passions it arouses or the convictions it engenders may in fact stimulate men to the violation of the law. Detestation of existing policies is easily transformed into forcible resistance of the authority which puts them into execution; and it would be folly to disregard the causal relation between the two. Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholastic subterfuge but a hard fought acquisition in the fight for freedom * * *." *Masses Pub. Co.* v. *Patten*, 244 Fed. 535, 541 (S. D. N. Y. 1917) *rev.* 246 Fed. 24 (2d Cir. 1917).

It is not for the municipal authorities to decide in advance what the effect of a speech may be. They can act if or when "political agitation" becomes an "incitement

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[19] Cf. *Kasper* v. *Brittain*, 245 F. 2d 92 (C. A. 6, 1957), cert. denied 355 U. S. 834 (1957), where a criminal conviction for contempt of an *ex parte* restraining order was upheld against First Amendment objections where the evidence clearly showed advocacy of immediate action that in fact resulted in illegal mob conduct which required the presence of the State Patrol and the National Guard to restore order.

to violent resistance."[20] Necessarily this means that the speech must go forward at its scheduled time subject only to a reasonable restriction on use of the public streets or parks. No other rule can lead to the emergence of the truth, which alone guarantees the survival of free government and justifies its continued existence.

IV

The convictions violated the Due Process Clause of the Fourteenth Amendment because there was no evidence tending to prove the offenses charged.

In *Garner* v. *Louisiana*, 368 U. S. 157, 163 (1961), the Court held that a conviction in a State court must be set aside under the Due Process Clause if it is "totally devoid of evidentiary support." Accord, *Thompson* v. *City of Louisville*, 362 U. S. 199 (1960). The rationale of *Garner* and *Thompson* is not whether the evidence in the record is insufficient to support the conviction, but whether there is any evidence at all tending to prove one or more of the essential elements of the offense. See *Garner* v. *Louisiana*, *supra*, 368 U. S. at 163-64. "In addition," as the Court stated in *Garner*, the concern is not "whether the evidence proves the commission of some other crime, for it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction" (*id.* at 164). The decisions in *Garner* and *Thompson* are directly applicable to the present case.

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[20] The Court of Appeals for the Fifth Circuit, in a recent case involving an injunction against the Congress of Racial Equality, said:

> "These fundamental rights to speak, assemble, seek redress of grievances and demonstrate peacefully in pursuance thereto cannot be abridged merely because a riot might be threatened to be staged or that police officers are afraid that breaches of the peace will occur if these rights are exercised." *Congress of Racial Equality* v. *Douglas*, 318 F. 2d 95, 102.

A. There was no evidence tending to prove that petitioners violated the injunction as it related to Sections 3-4 and 3-5 of the Fairfield City Code.

The injunction issued against the petitioners enjoined them "from holding a public meeting at 8 P. M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama * * * and from distributing further * * * handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961. * * * *" (R. 6)

There is not a shred of evidence in the record to show that any of the handbills were distributed after the issuance of the temporary restraining order. Not a single police officer saw any of the handbills distributed (see, *e.g.*, R. 20, 28, 32). Both appellant Fields (R. 54) and his wife (R. 64) testified that none of the handbills had been distributed following issuance of a restraining order. In fact, Police Officer Misso testified that "the building was padlocked" and that his orders were "to keep everybody out" (R. 34), and appellant Fields affirmed that he had been refused entrance to the hall to pick up the literature (R. 50). Even the lower court admitted that there was "no evidence that the pamphlet was redistributed" (R. 72).

The only literature that was distributed after the injunction was issued was several copies of appellants' newspaper *The Thunderbolt* (R. 18, 22-23, 28), which contains not one word relating to the meeting. This point was affirmed by Officer Misso (R. 23, 25).

Faced with this complete lack of evidence, the City of Fairfield attempted to prove that Fields had nevertheless accomplished his purpose by distributing *The Thunderbolt* because, as counsel for the City stated (R. 70):

> "[T]he Thunderbolt * * * has the same sort of agitation in it, the same sort of tendency to induce a breach of the peace, to induce disturbances between the races, to induce disorderly conduct."

The lower court also attempted to square the circle by stating (R. 72):

> "I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed."

And the Supreme Court of Alabama avoided the whole issue by stating (R. 88):

> "There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law. * * *"

It is submitted that the evidence which the lower courts seized upon to uphold the conviction for contempt was woefully inadequate for its purpose. Conviction for contempt on a record totally devoid of any evidence that petitioners had passed out the previously enjoined handbills deprived the petitioners of their liberty without due process of law.

B. There was no evidence tending to prove that petitioners had violated the injunction as it related to Section 14-53 of the Fairfield City Code.

Similarly, there is no evidence in the record that the appellants violated the order enjoining them from holding a public meeting on Wednesday, October 11, 1961. As Officer Misso testified, "There was no meeting held" (R. 24). This was not surprising, of course, since as Misso went on to explain, "The building was padlocked and * * * my orders were to keep everybody out" (R. 34). Thus, as appellant Fields testified, he "was refused entrance to the hall" and "no one could cross the street to the hall" (R. 50).

To be sure, as Chief Morris affirmed, "a crowd had congregated across the street from * * * the proposed meeting

place" (R. 27), and there is no denial of the fact that Fields as well as other people from the National States Rights Party were also in the vicinity across the street from the hall. Their presence there, however, was for the sole purpose of telling "the people that might come there that there wasn't going to be a meeting" (R. 63) and to direct "anyone who responded to the handbill before the injunction was issued to go to the Lipscomb City Park" (R. 49). As Police Officer Pope testified, appellant Fields was not attempting to hold any kind of meeting at the hall but rather "was telling them that the meeting had been called off over there and would be at * * * Lipscomb City Hall" (R. 19).

In the face of these facts, the City could hardly have claimed that the meeting had been held. Instead, counsel argued that Fields had "just as effectively had a meeting as if the injunction had not been issued because he went out there and he talked to all these people up and down" (R. 65-66). Even the lower court, however, could not bring itself to accept this. It made no mention of the public meeting, but instead chose to hold the appellants in contempt on the grounds of distributing *The Thunderbolt* (see R. 72). Similarly, the Supreme Court of Alabama avoided discussing the evidence as to the meeting by relying on its general statement that "there is evidence to support the finding that they did violate the terms of the temporary injunction * * *" (R. 88).

CONCLUSION

For the reasons stated above, appellants' convictions must be reversed and the charges against them dismissed.

Respectfully submitted,

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September 24, 1963.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 30

EDWARD R. FIELDS ET AL., APPELLANTS

v.

CITY OF FAIRFIELD

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Alabama (R. 86–90) is reported at 273 Ala. 588, 143 So. 2d. 177. The decree of the Circuit Court of Jefferson County, Alabama (R. 71–73) is not reported.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on June 14, 1962 (R. 91), and an application for rehearing was overruled on July 12, 1962 (R. 93). Probable jurisdiction was noted on March 18, 1963 (372 U.S. 940; R. 99) at which time the Solicitor General was invited to file a brief expressing the views of the United States. The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTION PRESENTED

Appellants were convicted of contempt of court for violating a state court's *ex parte* restraining order that prohibited them from distributing specified handbills and from holding a public meeting at a particular time and place. The question presented and discussed in this brief is whether their convictions violate the due process clause of the Fourteenth Amendment because they are wholly unsupported by evidence proving disobedience of the restraining order.

STATEMENT

On October 11, 1961, the City of Fairfield, Alabama, filed a complaint in the Circuit Court of Jefferson County, Bessemer Division, against Dr. Edward R. Fields and the National States Rights Party (R. 1–3). The complaint alleged that the defendants had "called a public meeting at 5329 Valley Road, Fairfield, Alabama, for Wednesday, October 11, 1961," and had "announced said meeting by distributing hand bills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield * * *" (R. 2).[1] It was

[1] The handbills which appellants had distributed read (R. 3–4):

WHITE WORKERS MEETING
*NIGGERS ARE TAKING OVER UNIONS!
*NIGGERS WANT OUR PARKS AND POOLS!
*NIGGERS DEMAND MIXED SCHOOLS!
Communists in NAACP and in WASHINGTON say Whites HAVE NO RIGHTS!
The Nigger gets everything he DEMANDS!
WHITE SUPREMACY CAN be saved
Whites CAN STOP this second Reconstruction!

charged that the handbills had been distributed upon the streets of Fairfield, and left in automobiles, in violation of Sections 3–4 [2] and 3–5 [3] of the General City Code of Fairfield, and that the defendants planned to hold the meeting without a permit, as required by section 14–53 of the City Code [4] (R. 2; Pet. 3–4). Finally, the complaint alleged that the "purpose of said meeting as manifested by the attached hand bill is to create tension, ill will, disturbances, and disor-

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HEAR IMPORTANT SPEAKERS FROM 4 STATES
TIME—8 P.M. DATE—WED. OCT. 11
PLACE—5329 VALLEY ROAD
IN DOWNTOWN FAIRFIELD, ALABAMA
Above the Car Wash
THUNDERBOLT Mobile Unit will Be Parked Out Front
Sponsored by National States Rights Party
Box 733, Birmingham, Alabama
PUBLIC INVITED
COME AND BRING YOUR FRIENDS!

[2] Section 3–4 provides:

Handbills, etc.—Distribution on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper handbills, circulars, dodgers or other advertising matter. [Ord. No. 354, § 4 (1957).]

[3] Section 3–5 provides:

Same—Placing or throwing in automobiles.

It shall be unlawful for any person to distribute in the city any handbill or other similar form of advertising by throwing or placing the same in any automobile or other vehicle within the city. [Ord. No. 354, § 5 (1957).]

[4] Section 14–53 provides:

Public meetings; permit required.

It shall be unlawful for any person or persons to hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor to do so. [Ord. No. 184, § 4, 11–9–32.]

derly conduct between the races in the City of Fairfield, Alabama" and that the meeting "is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield, Alabama * * * [and] will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and the inhabitants thereof" (R. 2).

Pursuant to the prayer of the complaint, the court, on the same day, issued an *ex parte* temporary restraining order, enjoining the defendants from (R. 5–6):

> * * * holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield * * * on October 10, 1961, until further orders from this Court * * *.

A final hearing on the application for permanent injunction was set for November 17, 1961 (R. 4–5).[5]

Dr. Fields and Robert E. Lyons[6] were charged with contempt for violating the Circuit Court's temporary restraining order (R. 8). On October 12, 1961, a hearing was held at which the following evidence was adduced:

On the afternoon of Tuesday, October 10 (the day before the injunction was issued), Mr. Smithson,

[5] Fields was served with the injunction at 11:50 A.M. on October 11 (R. 25).

[6] Lyons is a member of the National States Rights Party and its youth organizer (R. 58).

Mayor of Fairfield, learned that handbills announcing the October 11 meeting had been distributed in Fairfield, and that no application had been made to distribute the handbills or hold the meeting (R. 43). The Mayor thereupon sent a notice to Fields, delivered by a Fairfield officer, in which Fields was advised that "he had already violated[7] * * * one of the ordinances of the City of Fairfield" and that the city also had an ordinance in regard to public meetings (R. 43). That evening, the Mayor had two telephone conversations with Fields (R. 37–44), during which Fields insisted that the meeting would be held and the Mayor asserted "you won't have the meeting in Fairfield" (R. 38).[8] However, on October 11, the Mayor agreed to see Fields at 2 p.m. that day, but, after Fields was served with the injunction (just before noon), he decided not to meet the Mayor be-

[7] The Mayor had no knowledge of whether additional handbills were distributed after Fields was served with the injunction (R. 44).

[8] Fields testified that the Mayor had said that he would not issue a permit "for any such organization to hold such a meeting in Fairfield" (R. 53). However, the National States Rights Party had held a meeting in Fairfield on the night of October 10, 1961 (R. 47). That meeting was peaceful, and no trouble occurred (R. 47). Fields also testified that the purpose of the October 11, 1961, meeting was to "inform the people on a number of subjects", including the prosecution of the Anniston bus burners (R. 52), to acquaint the audience with the aim of the National States Rights Party, and to recruit new members after the meeting (R. 53). Fields explained that the party is "an organization that stands for law and order" and that it intended to "sponsor candidates for public office in future elections in Alabama" (R. 52–53).

cause "no further good could be made out of the meeting with the Mayor * * *" (R. 55).[9]

Dr. Fields' uncontradicted testimony was that after he was served with the injunction the meeting in Fairfield was called off and transferred to the Lipscomb City Park (R. 47–48). He explained that "Mayor Olney [of Lipscomb] was contacted and he volunteered both the city hall for the meeting or the city park" (R. 49). Fields emphasized that he "didn't have any intention whatever of violating" the injunction (R. 51); "* * * that is why we got the other hall, the other park" (R. 52).[10] When asked "* * * You did not actually do one single act in violation of this ordinance, did you?", he replied, "We tried to do everything to avoid violating the ordinance, the injunction" (R. 52). Distribution of the pamphlet announcing the meeting scheduled for the evening ceased after the restraining order was served (R. 54).

About 1:30 P.M., Dr. Fields and Mr. Lyons went to the place where the meeting had originally been scheduled in order to pick up a caretaker they had left at the hall and "to take [their] literature out of the hall and carry it to the new meeting place" (R. 49–50). But the building was padlocked, a copy of the injunc-

[9] Fields testified that, instead of meeting with the Mayor, he "spent the rest of the afternoon trying to arrange for another hall" (R. 55).

[10] Mr. Short, Chairman of the Jefferson County Citizens' Council, testified that he went to Lipscomb for the meeting and expected to see Fields there (R. 60–61). He explained (R. 62): "* * * they told me there had been an injunction was the reason they moved it to Lipscomb."

tion was affixed to the door, and they were refused entry by a police officer (R. 33–34; 50).

In the evening, about 7:30 P.M., Dr. Fields, accompanied by his wife and Mr. Lyons, went to the neighborhood of the Fairfield meeting site (R. 49). Across the street from the hall where the meeting was to have been held, a crowd had gathered (R. 54).[11]

According to Dr. Fields, he came to the scene "for the sole purpose of directing anyone who responded to the handbill before the injunction was issued to go to the Lipscomb City Park" (R. 49).[12] He stated that he so informed "ten or twelve people" (R. 49–51), distributed several copies of the Party newspaper, the "Thunderbolt" (R. 54–55),[13] and was arrested

[11] Elsewhere, Fields stated that "[a]pproximately not more than twelve people" had gathered and that "I saw twelve people" (R. 55, 57). However, Police Chief Morris testified that a "fairly good crowd" had congregated (R. 26).

[12] Mrs. Fields testified that she and her husband went to the site of the meeting "to tell the people that might come there that there wasn't going to be a meeting" (R. 63). She stated that she intended to attend a meeting in Lipscomb and that after the injunction was served there were not "any plans whatever to hold the meeting in Fairfield" (R. 63; 64). Mrs. Fields also testified that after the injunction was served no copies of the leaflet announcing the meeting were distributed (R. 64).

[13] A copy of the issue in question was introduced at the contempt hearing (R. 20) and is included in the record before this Court (between pages 20 and 21). It contains no announcement of a meeting in Fairfield. Defendants' counsel so advised the court (R. 25). The issue of the "Thunderbolt" contained anti-Negro, anti-Jewish, and anti-federal-government articles. For example, the headline on page 1, referring to an article about the burning of a freedom-rider bus at Anniston, Alabama, said: "'Freedom Riders' Burn Bus While Bobby Kennedy Blames 9 Innocent White Alabamians." An

"almost immediately" (R. 49). Only then did he cross the street to the sidewalk adjacent to the scheduled meeting hall. This was at the direction of the arresting officers, who placed him in a patrol car (R. 50–51).[14]

Fields' account of what occurred on the evening of October 11 was corroborated in every respect by the testimony of Fairfield police officers. Officer Pope testified that when he arrived at the scheduled meeting place, he saw Fields "across the street * * * telling the people that the meeting was going to be at Lipscomb City Hall instead of there at Fairfield" (R. 18), that the meeting scheduled for Fairfield "had been called off" (R. 19) and that they should "go on over to Lipscomb" (R. 20). Pope stated that there was no disturbance and that conditions were peaceful (R. 19). When Pope was asked whether Fields was "attempting to hold any kind of a meeting there," he replied: "No, sir. He was just saying the meeting would be held in Midfield or Lipscomb—at Lipscomb City Hall" (R. 20). Officer Pope testified that he did not see Fields distribute any pamphlet other than the "Thunderbolt" (R. 18, 20). Officer Misso, who arrested Lyons on Mayor Smithson's orders, also testified that "[t]here was no meeting held" and that the

editorial on page 3, referring to a story carried on the same page about an allegedly Jewish Judge who imposed a lenient sentence upon a Negro who molested a white girl, includes such phrases as "This filthy kike, Judge Gold"; "The satanic Jew;" "nigger rapes of innocent little White girls"; "the negro animals."

[14] This was corroborated by Police Officer Wood (R. 31–32).

only leaflet he saw at the time was the "Thunderbolt" (R. 22, 24).

When Chief of Police Morris arrived on the scene, Fields and Lyons were across the street from where the meeting was scheduled (R. 26–27). Morris testified that when Fields was brought over to him, he said, "[d]idn't I tell you to stay out of Fairfield," and that Fields replied, "[a]ll I'm doing is directing them over to Lipscomb" (R. 26). Fields and Lyons explained to Morris that "they were over there [across the street from where the meeting was scheduled] to ask the people to go on to Lipscomb and they were trying to get the crowd over to Lipscomb" (R. 28). Chief Morris did not see any leaflet passed out by Fields or Lyons other than the "Thunderbolt" (R. 28).[15] There was no contrary evidence.

The trial judge found the appellants guilty of contempt and sentenced each of them to five days in jail and a fine of fifty dollars (R. 8). While, in the opinion of the trial judge, the ordinances were "a legal exercise of the police power of the municipality" (R. 72), he held that the appellants could not "collaterally attack the constitutionality of [the] ordinance in a contempt proceeding without first purging yourself of that contempt, if there is any there" (R.

[15] Officer Wood testified that he and another policeman "started looking through the cars [which were at or near the meeting place] for anything we could find, pamphlets or magazines and what have you, and we ran across a white '59 Ford with these Thunderbolts in it. There were at least a hundred or more" (R. 30). Wood also found three shotgun shells and a rifle slug in this car (R. 30-31). The car belonged to Fields (R. 34).

71–72). On the question of evidence of violation, the judge ruled (R. 72):

> While there is no evidence that the pamphlet was redistributed, the writ of injunction says "distribute further handbills, announcing such meeting, as were distributed in the city of Fairfield."
>
> I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed.

The convictions were affirmed by the Supreme Court of Alabama, which rendered its opinion (R. 86–90) on June 14, 1962. The Supreme Court said (R. 88):

> Fields and Lyons were arrested that night where a crowd had gathered across the street from the advertised place of meeting. Fields was making announcements to the crowd and both he and Lyons were distributing copies of "The Thunderbolt" * * *.

Addressing itself to a defense contention "that the evidence shows they did not violate the terms of the injunction" the court held that (R. 88):

> There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law; but if the court below misapplies the law to the facts as found by it or there is no evidence to support

> the finding, a question of law is presented to be reviewed upon the petition for certiorari. * * *

On the question of the constitutionality of the ordinance requiring a permit for the conduct of a public meeting,[16] the court remarked, "[w]e cannot say that it is unconstitutional on its face" (R. 88), but held that, in any event, the validity of the ordinance could not be tested by disobedience of the restraining order. It concluded that "petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings" (R. 90).

ARGUMENT

INTRODUCTION AND SUMMARY

On its face, the opinion below raises a question of broad importance—whether the rule that one may not test by disobedience the validity of an injunction issued by a court of competent jurisdiction—affirmed by this Court in *United States* v. *United Mine Workers*, 330 U.S. 258—applies in the context of the peaceful exercise of First Amendment rights. On the one side, much of what was said in *United Mine Workers* would seem to support application of that rule here. On the other hand, the plain unconstitutionality of the *ex parte* injunction issued in this case,[17] premised

[16] The court appears to have assumed that only the meeting ordinance, and not the handbill ordinance as well was involved (R. 87, 88).

[17] See *Schenck* v. *United States*, 249 U.S. 47; *Gitlow* v. *New York*, 268 U.S. 652; *DeJonge* v. *Oregon*, 299 U.S. 353; *Hague* v. *C.I.O.*, 307 U.S. 496; *Thomas* v. *Collins*, 323 U.S. 516. The fear that spectators might create disorder could not justify

on unconstitutional local ordinances,[18] and the obvious effect of the court order as a prior restraint on constitutionally protected rights of free speech and assembly, argue for a different result. The Court itself has recognized exceptions to the rule of "obey now; challenge later." See *Thomas* v. *Collins*, 323 U.S. 516; *In re Green*, 369 U.S. 689. See, also, Cox, *The Void Order and the Duty to Obey*, 16 U. of Chic. L. Rev. 86 (1948).[19] Examination of the record in this case

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the restraint imposed on freedom of speech and assembly. *Edwards* v. *South Carolina*, 372 U.S. 229.

[18] Section 3–4 of the Fairfield City Code, cited in the complaint, flatly prohibits the distribution "on any of the streets, avenues, alleys, parks or any vacant property within the city," of "any * * * handbills, circulars, dodgers or other advertising matter." An ordinance of such unlimited scope is unconstitutional on its face under the First and Fourteenth Amendments. *E.g.*, *Lovell* v. *Griffin*, 303 U.S. 444; *Hague* v. *C.I.O.*, 307 U.S. 496; *Schneider* v. *State*, 308 U.S. 147.

The meeting ordinance is likewise plainly invalid on its face. Section 14–53 of the City Code makes it unlawful for any person or persons to "hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor * * *." There are no statutory standards by which the mayor is guided in the exercise of the power; nor have we been able to find any Alabama decisions construing this or similar ordinances or statutes. Thus, the ordinance must be taken as written and, as such, it is clearly unconstitutional. *Hague* v. *C.I.O.*, 307 U.S. 496; *Niemotko* v. *Maryland*, 340 U.S. 268, 271; *Kunz* v. *New York*, 340 U.S. 290; *cf. Staub* v. *City of Baxley*, 355 U.S. 313; *Saia* v. *New York*, 334 U.S. 558; *Largent* v. *Texas*, 318 U.S. 418, 422; *Jones* v. *Opelika*, 319 U.S. 103, adopting *per curiam* on rehearing the dissenting opinion of Chief Justice Stone in 316 U.S. 584, 600–602. The Fairfield ordinance is particularly objectionable in that it apparently prohibits meetings without a permit on private premises as well as in a public place.

[19] It is, of course, well settled that failure to apply for a permit under a licensing statute does not bar a subsequent

makes it clear, however, that there is actually no occasion to define the limits of the *United Mine Workers* doctrine. Disposition here, we believe, may properly rest on what is plainly a narrower and preliminary ground.

Indeed, the present convictions are vitiated by the most basic flaw of all—absence of any evidence that the defendants violated the injunction. Since, as we show, the lack of evidence of contempt is so glaring as to be beyond dispute, the inquiry may stop there. Any further discussion of the constitutional validity of the injunctive order, or of appellants' right to challenge it under the circumstances, seems unnecessary. *Cf. Garner* v. *Louisiana*, 368 U.S. 157, 163. We rest on the fact that the record contains no evidence which would permit a finding of contempt.

THE CONVICTIONS VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THERE WAS NO EVIDENCE THAT APPELLANTS DISOBEYED THE TEMPORARY RESTRAINING ORDER ISSUED AGAINST THEM

The governing principle is plain: "Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his

attack on its constitutionality. *Smith* v. *Cahoon*, 283 U.S. 553; *Lovell* v. *Griffin*, 303 U.S. 444; *Staub* v. *City of Baxley*, 355 U.S. 313. By a parity of reasoning, it may be argued that one should not be compelled to apply for dissolution of a plainly invalid judicial decree in order to preserve the question of its constitutionality upon conviction for disobeying it.

guilt." *Thompson v. Louisville*, 362 U.S. 199, 206.[20] See, also, *Garner v. Louisiana*, 368 U.S. 157; *Taylor v. Louisiana*, 370 U.S. 154. To be sure, "the state's ultimate conclusion on guilt is examined from the due process standpoint in the light of facts undisputed by the state," *Gallegos v. Nebraska*, 342 U.S. 55, 61, and the constitutional claim "does not turn on a question of sufficiency of evidence." *Garner v. Louisiana, supra*, at 163. The inquiry is, rather, whether "the convictions * * * are so totally devoid of evidentiary support as to render them unconstitutional under the Due Process Clause of the Fourteenth Amendment."[21] *Ibid.* Cf. *Konigsberg v. State Bar*, 353 U.S. 252; *Schware v. Board of Bar Examiners*, 353 U.S. 232. Judged by this standard, it

[20] The Court quoted from *DeJonge* v. *Oregon*, 299 U.S. 353, 362. See also *Cole* v. *Arkansas*, 333 U.S. 196, 201 ("It is as much a violation of due process to send an accused to prison following conviction of a charge on which he is never tried as it would be to convict him upon a charge that was never made"), and, *United States ex rel. Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106 ("Deportation * * * on charges unsupported by any evidence is a denial of due process * * *").

[21] The principle of the *Thompson* and *Garner* cases has been applied by Alabama Courts. In *Mauldin* v. *State*, 28 Ala. App. 30, 177 So. 309 (1937), the defendant was tried and convicted for embezzlement of eleven hogs. On appeal, the Court of Appeals of Alabama noted (28 Ala. App. at 31): "* * * we have the anomalous situation of a defendant being convicted of a crime charged against him without any evidence to sustain it." The defendant's conviction was reversed and the court said (28 Ala. App. at 32): "To permit this conviction to stand on the record as it appears before us would be to deny this defendant the right of due process of law, guaranteed to him by the Constitution of the United States (Amendment 14) and by the Constitution of this State (section 6)."

seems to us plain that the present convictions cannot stand.[22]

1. Appellants were convicted of contempt for violating a narrowly drawn, specifically circumscribed restraining order. They were enjoined from: (1) "holding a public meeting at 8 P.M. on Wednesday, October 4, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced" and (2) "distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961 * * *." There is no evidence in the record that appellants engaged in either of these activities.

a. The undisputed evidence (most of which was provided by the City's own witnesses) shows that Fields and Lyons appeared across the street from the place where the meeting had been scheduled and informed the persons who had gathered that the announced meeting would not be held in Fairfield but in the nearby

[22] We believe that it is clear that the *Thompson* rule is equally applicable to criminal contempt proceedings as to ordinary criminal cases. In both situations, a man's liberty is at stake. Except for the right to trial by jury, a defendant in a criminal contempt proceeding receives the full protection of due process. *Green* v. *United States*, 356 U.S. 165. Thus, he is presumed to be innocent, his guilt must be proved beyond a reasonable doubt, and he cannot be compelled to testify against himself. *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444; *Michaelson* v. *United States*, 266 U.S. 42, 66. He receives notice of and has a reasonable opportunity to meet the charges against him, and has the right to counsel and the right to present his own witnesses and or to cross-examine others, *Cooke* v. *United States*, 267 U.S. 517, 537. There is no reason why he should be deprived of the constitutional rule recognized in *Thompson*.

town of Lipscomb. They suggested that the people congregated there should go to Lipscomb for that purpose.

Thus, not only did Fields and Lyons not hold a public meeting; they were not even at the place where they were enjoined from appearing, *i.e.*, 5329 Valley Road. They were across the street and were only brought to the meeting place after they had been arrested. And certainly appellants' conduct in informing people that the scheduled meeting would *not* be held at the time and place announced, but would be held in another town, does not fall within the language restraining appellants from "holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced * * *."

b. Nor did Fields and Lyons distribute any handbills announcing a meeting. The restraining order is very precise as to the type of handbills proscribed. All that is covered are "handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961 * * *." There is no evidence that, after the restraining order was served, Fields or Lyons distributed any handbills of the type distributed on October 10, 1961. Fields merely passed out copies of the "Thunderbolt", a publication which did not mention that any meeting was to be held that night and which was not included within the terms of the injunction. It is a newspaper carrying stories and editorials reflecting a racist viewpoint. The injunction said nothing about distributing newspapers or propaganda. Indeed, it did not even enjoin distribution of "handbills" as such (if the

"Thunderbolt" could conceivably be construed to be a handbill), but only (1) "handbills *announcing such meeting*" and (2) handbills "such as were *distributed* * * * on October 10, 1961" (emphasis supplied). In short, to fall within the terms of the order, the "handbill" would have to announce a meeting *and* be similar to the handbills used the day before. The "Thunderbolt" does not qualify.

2. The trial judge, considering the "tone and content" of the "Thunderbolt", found that the conduct of appellants "was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed" (R. 72). The court's findings are not a substitute for evidence,[23] and, as already indicated, there simply is no evidence in the record to support the court's conclusion. Moreover, even if the court's purely subjective view were to be accepted *arguendo,* it still would not cure the defect. The court only found that appellants violated the injunction by "bring[ing] home the fact that the meeting was going to be held." But this erroneously assumes that the holding of *any* meeting, or an announcement of *any* meeting, would be contemptuous, when, in fact, the injunction ran only against holding a *specific* meeting and announc-

[23] *Cf.* Mr. Justice Frankfurter, concurring in *Garner* v. *Louisiana*, 368 U.S. 157, 175: "A judge's private knowledge, or even 'knowledge by notoriety,' to use Dean Wigmore's phrase, IX Evidence, § 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. *Thompson* v. *City of Louisville*, 362 U.S. 199."

ing such a *specific* meeting. Holding a meeting across the street from the prohibited site might, perhaps, be viewed as improper circumvention of the injunction. But the same can hardly be said of the proposal to adjourn the meeting to another municipality, where the moving parties in the suit had no jurisdiction and the ordinances supporting the restraining order had no force.[24]

The trial judge's finding can only rest on an impermissibly broad reading of his injunction as banning any meeting anywhere, or as prohibiting any distribution of Party literature. We cannot ascribe such a patently absurd "interpretation" of the order to the Alabama Supreme Court, assuming it is free to "construe" local judicial decrees in the same way that it may construe State law. If we did, the contempt convictions would fall because the injunction, so read in the face of the narrowly drawn text, would plainly fail to give adequate notice. See *Lanzetta* v. *New Jersey*, 306 U.S. 451; *Musser* v. *Utah*, 333 U.S. 95; *Winters* v. *New York*, 333 U.S. 507; *Wright* v. *Georgia*, 373 U.S. 284.[25]

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[24] The record is clear that the City of Fairfield, on whose motion the temporary restraining order was issued, is a separately incorporated municipality, wholly distinct from the City of Lipscomb, whose Mayor invited appellants to use the park for the meeting, and that the Fairfield ordinances supporting the injunction are purely local in scope (see R. 1–2, 17, 39, 40–41, 43, 46, 49, 60, 63). A reference to any atlas will show that the two towns are some distance apart.

[25] The degree of certainty of an injunction is a factor to be considered in a contempt proceeding. See II High, *A Treatise on the Law of Injunctions*, Sec. 1431a (4th ed., 1905): "A decree for an injunction which is so indefinite and uncertain as to be absolutely void can not be made the basis for contempt proceedings, and a de-

The fact is that there is absolutely no evidence that Fields or Lyons violated, or even intended to evade, the court's order. Indeed, all of the evidence is to the contrary. Fields and his wife testified they went to the meeting place to inform people that the meeting would not be held in Fairfield but that a meeting place in Lipscomb had been arranged so as not to violate the court's order.[26] The testimony of police officers fully substantiates Field's claim that all he did was to notify people that the scheduled meeting would not be held in Fairfield but in Lipscomb. The trial judge's conclusion that the subjective intent of the appellants was to evade the order is refuted by the objective conduct of the appellants and the testimony of all the witnesses. This is certainly a case in which the determination of the trier of fact cannot be accepted. As this court said in *Lisenba* v. *California*, 314 U.S. 219, 238: "* * * we accept the determination of the trier of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process."

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fendant against whom such a decree purports to run can not be held guilty of contempt of court in disregarding it." High also states (*id.* at sec. 1459): "* * * the injunction should always be plain and specific, since a defendant can not be entrapped into a contempt of court by vague and general orders * * *."

It is equally settled that for purposes of contempt an injunction must be narrowly construed. See *Nasif* v. *United States*, 165 F. 2d 119 (C.A. 5); *B & C Truck Leasing, Inc.* v. *I.C.C.*, 283 F. 2d 163 (C.A. 10); *Russell C. House Transfer & Storage Co., Inc.*, v. *United States*, 189 F. 2d 349 (C.A. 5); II High, *A Treatise on the Law of Injunctions*, sec. 1419 (4th ed., 1905).

[26] One witness testified that he went to Lipscomb for the meeting and expected to see Felds there. See note 10, *supra*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of Alabama should be reversed.

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SEPTEMBER 1963.

MOTION FILED OCT 2 1963

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IN THE

Supreme Court of the United States

October Term, 1963

No. 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

—v.—

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Petitioner, NAACP Legal Defense and Educational Fund, Inc., respectfully moves this Court for permission to file the attached brief *amicus curiae* and as reasons therefor sets forth the following:

1. Petitioner is a New York corporation organized for the purpose, among other things, of securing equality before the law, without regard to race, for all citizens. In this connection members of petitioner's staff often have represented Negro citizens before various courts, including this Court, on claims that they have been denied equal protection of the laws, due process of law, and other rights secured by the constitution and laws of the United States. Moreover, members of petitioner's staff have represented citizens who have been denied First Amendment rights while attempting to secure equal treatment within society and before the law without regard to race.

2. It goes without saying that petitioner abhors the anti-Negro, anti-Semitic views and political program of Edward R. Fields and the National States Rights Party. They have opposed petitioner's program vigorously.[1] They embrace a policy of racism diametrically opposed to the fundamental principles upon which our nation was founded. At the same time petitioner is compelled to recognize that if this particular conviction against Fields is upheld, a precedent in the Alabama courts will be affirmed, and substance will be given to similar proceedings in other courts directed against proponents of equality, which will deny rights secured by the Fourteenth Amendment and seriously impede the movement for equal rights now current in the nation. While petitioner believes that all lawful measures should be taken against illegal conduct by Fields and his party, it does not believe that the state may proceed against him in a way which denies First Amendment rights. Difficult as it may be to take this position in this case,[2] petitioner believes that First Amendment rights must be vigorously guarded if the proponents of equality are to triumph. Injunctions cannot restrain political expression, and contempt penalties for the violation of such injunctions must not be sustained or the right to petition for equal protection of the laws will be violated.

3. Advocates of racial equality have been the victims of innumerable legal proceedings of various sorts throughout the South. See, *e.g. Garner* v. *Louisiana*,[3] *Peterson* v.

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[1] See New York Times, September 24, 1963, p. 1, col. 1.

[2] But see Gellhorn, *American Rights* 50 (1960): "[C]onstitutional issues have to be fought out on their own merits, rather than on the merits of the individual in connection with whom the issue may have arisen."

[3] 368 U. S. 157.

City of Greenville,[4] *Edwards* v. *South Carolina*,[5] *Taylor* v. *Louisiana*,[6] *NAACP* v. *Alabama*.[7] All of these efforts to use the criminal law, the common law and various other powers of government to stifle free expression on behalf of racial equality have failed. Now it is claimed that by the device of imposing an injunction, First Amendment expression on behalf of racial equality can be stifled, at least until ultimate adjudication of the underlying issues in the case, which may be a matter of years. See *NAACP* v. *Alabama*.[8] Pursuant to this new tactic various governmental bodies have obtained injunctions against demonstrations on behalf of racial equality throughout the South.[9]

Indeed, within the State of Alabama, a conviction for contempt for having violated a temporary restraining order obtained without notice recently was entered against Wyatt T. Walker, Dr. Martin Luther King and others in the City

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[4] 373 U. S. 244.

[5] 372 U. S. 229.

[6] 370 U. S. 154.

[7] 360 U. S. 240.

[8] 360 U. S. 240.

[9] *Alabama* v. *Robinson*, Circuit Court of Etowah County, Alabama, amended temporary injunction issued June 18, 1963; *Alabama ex rel. Flowers* v. *Zellner*, Circuit Court of DeKalb County, Alabama, May 7, 1963; *C.O.R.E.* v. *Douglas*, 318 F. 2d 95, injunction vacated 5th Circuit, May 13, 1963; *Kelley* v. *Page*, M. D. Ga., July 19, 1963, injunction vacated, 5th Cir., July 24, 1963; *City of Jackson* v. *Salter*, Chancery Court of the First Judicial District of Hinds County, Mississippi, No. 63,429, June 6, 1963; *Porzio* v. *Williams*, Superior Court of Chatham County, Georgia, June 19, 1963; *City of Clarksdale* v. *Aaron Henry et al.*, Coahoma County Court, Mississippi, July, 1963; *City Council of Charleston* v. *NAACP et al.*, Court of Common Pleas, Charleston, South Carolina, temporary restraining order entered July 26, 1963; *Messelman Theatres* v. *McLean et al.*, Superior Court of Cumberland County, North Carolina, temporary restraining order entered May 29, 1963; *Knight* v. *NAACP et al.*, County Court, Pine Bluff, Arkansas, No. 34,703, temporary restraining order entered August 13, 1963.

of Birmingham, on the authority of *Fields* v. *City of Fairfield*, 273 Ala. 588, 143 So. 2d 177.[19]

4. Because of this dimension of the case, which may not adequately appear in argument on behalf of Dr. Fields and his party, and because of the involvement of the NAACP Legal Defense and Educational Fund in behalf of the defendants in most of the cases cited above, we respectfully submit that the views of the Fund on this issue may be of interest to the Court.

5. Petitioner has requested permission of appellants and appellee to file this brief *amicus curiae;* these requests have been denied.

WHEREFORE petitioner prays that the attached brief *amicus curiae* be permitted to be filed with this court.

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[19] *City of Birmingham* v. *Walker et al.*, Circuit Court, Tenth Judicial Circuit, Alabama, contempt conviction decreed April 26, 1963; brief for respondent City of Birmingham, Supreme Court of Alabama, pp. 21-24.

IN THE

Supreme Court of the United States

October Term, 1963

No. .....

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Appellants,

—v.—

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF *AMICUS CURIAE*

The interest of this *amicus* is set forth in the above motion for leave to file brief *amicus curiae.*

Amicus adopts the statement of facts as set forth in appellants' brief.

1. Upholding appellants' conviction, the Alabama Supreme Court ruled in effect that punishment may be imposed for violation of a judicial order restraining the distribution of pamphlets and the holding of a political meeting. But punishment cannot be inflicted for the peaceful exercise of First Amendment rights. *Edwards* v. *South Carolina*, 372 U. S. 229; *Talley* v. *California*, 362 U. S. 60; *Terminiello* v. *Chicago*, 337 U. S. 1. It may, of course, be imposed for certain activities excluded from First Amendment protection although they are closely connected with speech. But a state is not free to adopt procedures "without regard to the possible consequences for constitutionally protected speech," *Marcus* v. *Property Search Warrant*, 367 U. S. 717, 731, and for that reason the power to impose

a prior restraint upon expression has unquestionably been denied. *Near* v. *Minnesota*, 283 U. S. 697; *cf. Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296, 304-307; *Niemotko* v. *Maryland*, 340 U. S. 268; *Staub* v. *Baxley*, 355 U. S. 313. Indeed, the reason that vague statutes are unconstitutional when applied to First Amendment rights is that their very existence has an inhibitory effect upon expression and, therefore, in that sense they constitute a prior restraint. See *NAACP* v. *Button*, 371 U. S. 415; *cf. Bantam Books* v. *Sullivan*, 372 U. S. 58. Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67.

The question on this appeal is whether a state may impose a criminal penalty for the exercise of free speech by adopting a rule of procedure prohibiting collateral attacks on injunctions restraining First Amendment rights. If, as the court below ruled, Fields was required to obey the injunction of the Fairfield Circuit Court until its validity had been adjudicated or incur certain punishment, then by utilizing the proscribed device of enjoining expression, a state may achieve a result otherwise prohibited—criminal punishment of peaceful expression.

We believe that this Court has made clear its disapproval of rules so destructive of constitutional rights. Manifestly no court has the power to achieve by injunction a result which government may not constitutionally effect. Compare *Shelley* v. *Kraemer*, 334 U. S. 1, with *Buchanan* v. *Warley*, 245 U. S. 60; and compare *NAACP* v. *Alabama*, 357 U. S. 449 with *Bates* v. *City of Little Rock*, 361 U. S. 516. "It is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize." *NAACP* v. *Alabama*, *supra*, at p. 462.

In *Thomas* v. *Collins*, 323 U. S. 516, the Court stated at p. 540:

> If the exercise of the rights of free speech cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition of exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

2. As authority for its position that the question of constitutionality of a judicial order may not be adjudicated on an appeal from a judgment of conviction for contempt, the court below relied on *United States* v. *United Mine Workers of America*, 330 U. S. 258. In that case a majority of the Court held that the injunction was lawful because they found that the Norris-LaGuardia Act did not apply. (In this case, *amicus* contends that the injunction is unlawful.) The opinion of the Court and that of Mr. Justice Frankfurter concurring in the judgment also stated that the validity of a criminal conviction for contempt would not be reversed on the ground that the underlying order was invalid.

However, in *Mine Workers* the effect on constitutional rights of denying collateral attack was not in issue. Where constitutional rights *are* affected, the Supreme Court of the United States has consistently reversed criminal contempt convictions for disobedience of judicial orders. *Johnson* v. *Virginia*, 373 U. S. 61; *George* v. *Clemmons*, 373 U. S. 241; *Thomas* v. *Collins*, *supra*.

In *Johnson* v. *Virginia*, and *George* v. *Clemmons*, the orders underlying the contempt convictions were held to violate the equal protection clause of the Fourteenth Amendment. In *George* v. *Clemmons*, 373 U. S. 241, the State argued unsuccessfully that even if the state court's order of segregated seating in the courtroom was illegal, Negroes had no right to violate the order, but instead were required to obey it pending a challenge of its legality in other proceedings. U. S. Law Week, April 30, 1963, p. 3355. In *United Gas, Coke and Chemical Workers of America* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, the injunction which the union disobeyed violated constitutional prohibition against state interference in a field pre-empted by federal legislation. Cf. *In Re Green*, 369 U. S. 689.

Moreover, the opinion of the court in *Mine Workers* noted that "a different result would follow were the question of jurisdiction frivolous and not substantial." 330 U. S. at p. 293. That exception was described by Mr. Justice Frankfurter as follows:

> [A]n obvious limitation upon a court cannot be circumvented by a frivolous inquiry into the existence of a power that has unquestionably been withheld. . . . In such a case, a judge would not be acting as a court. He would be a pretender to, not a wielder of, judicial power. 330 U. S. at p. 310.

As Fields had a clear First Amendment right here, the court's inquiry into its power to issue a temporary restraining order was frivolous.[1] And we do not believe that the

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[1] As the inquiry into the court's power was *ex parte*, Fields had no opportunity to contest the jurisdiction of the court prior to his trial for contempt. If collateral attack on the order is not permitted at the trial for contempt, the conviction may violate due process requirements. *In Re Green*, *supra*, where the Supreme Court reversed a conviction for contempt of an *ex parte* temporary restraining order as a denial of due process.

difficulty inherent in determining the issue of the validity of the injunction is relevant to the existence of a duty to obey pending that determination, as was suggested in *Mine Workers.* (In *Thomas* v. *Collins, supra* and *United Gas, Coke and Chemical Workers* v. *Wisconsin Employment Relations Board, supra,* the issues were extremely complicated.) Rather, the sole question is whether the order is required to be reversed because of constitutional infirmity.

Constitutional rights are "present rights. . . . The basic guarantees of our constitution are warrants for the here and now, and unless there is an overwhelmingly compelling reason they are to be promptly fulfilled." *Watson* v. *City of Memphis,* 373 U. S. 526 at p. 533. There is no overwhelmingly compelling reason which warrants delay of the exercise of the First Amendment rights pending judicial consideration and reversal of an unconstitutional order. The reason suggested in *Mine Workers,* respect for judicial process, has "a seductive attractiveness," Murphy, *J.* dissenting in *U. S.* v. *United Mine Workers of America, supra,* at p. 340, but is not compelling in the sensitive area of First and Fourteenth Amendment rights on close examination.

If the injunction were valid and the judgment of contempt were properly imposed the judiciary would be vindicated and appellant would be required to serve his sentence. But, it is argued that even an invalid temporary restraining order must be obeyed to vindicate respect for the judiciary. If the prior restraint is, as we submit, unconstitutional, then the courts are not denied respect by reversing a contempt conviction any more than when any other conviction is reversed, as for a faulty indictment or charge to the jury or as when a statute or proceeding under the common law is held to violate similar rights. The fact is that the ulti-

mate and underlying respect for the law demands, under our system, that all men, including those sitting as judges, act within the limitations of the Constitution of the United States.

Prior to *Mine Workers* this Court apparently believed that respect for the courts would be maintained if it followed the rule that when a court acted without power its orders were regarded as a nullity and no penalty could be imposed for disregard of them. In *Ex Parte Sawyer*, 124 U. S. 200, a contempt conviction for disobeying a restraining order granted in direct contravention of a federal statute prohibiting injunctions of state court proceedings was reversed. The Court held that the statute's restriction nullified the injunction.

In *Ex Parte Fisk*, 113 U. S. 713, a contempt conviction was reversed because the order which was disobeyed was in a category which the court could not issue. No penalty for disobedience was imposed in *Ex Parte Rowland*, 104 U. S. 604, because the writ of mandamus exceeded the legal limitation permissible for such orders.

It was only where the court had the power to make the order that a contempt conviction was upheld. In *United States* v. *Shipp*, 203 U. S. 563, the case which was relied upon in the *Mine Workers* opinions,[2] the Court had the power to issue the stay order which was violated. It so stated at p. 573. There was no doubt then that the Supreme Court has the power to issue a stay pending its determination of the merits of an appeal. There is no doubt today. "How could there be doubt about a power that has existed uninterruptedly ever since Congress gave it by the Act of September 24, 1789? Section 14 of the Judiciary Act, 1 Stat. 73, 81-82." Frankfurter, *J.*, dissenting in *Rosenberg* v. *United States*, 346 U. S. 273, 302 fn. 1.

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[2] *Worden* v. *Searls*, 121 U. S. 14, also cited in *Mine Workers*, was not a criminal contempt case.

In *Shipp*, Mr. Justice Holmes held that the question of whether or not there was a Federal question raised on an appeal from a denial of habeas corpus was irrelevant to the question of the Court's authority to stay execution pending its decision to hear the appeal. The Court's authority to issue stays pending appeal might indeed have been used erroneously where the appeal was without merit. However, a decision dismissing the appeal would cast no doubt upon the authority of the Court to issue the stay or vitiate the authority of the Court to issue stay orders in the future.

Unlike *Shipp*, in this appeal the constitutional question is directed to the authority of the Court to issue the injunction underlying the contempt conviction. If, as we contend, the Fourteenth Amendment to the United States Constitution prohibited the issuance of the injunction, the injunction was a nullity and of no effect and the State may not impose punishment for its violation.

Those pressing for Fourteenth Amendment rights may well risk punishment if they mistake the area of constitutional protection; they should not incur punishment when their rights are vindicated.

If the decision of the lower courts in this case is not reversed, we will see the serious consequences of which Mr. Justice Rutledge warned in his dissent in *Mine Workers*:

> Thus, the constitutional rights of free speech and free assembly could be brought to naught and censorship established widely over those areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. This Court has refused to countenance a view so destructive of the most fundamental liberties. Thomas v. Collins, 323 U. S. 516, 89 L. ed. 430, 65 S. Ct. 315.

> These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason. 330 U. S. at p. 352.

CONCLUSION

If all that were involved here were the merits of Fields's obnoxious notions, the result would be simple. But principles of constitutional law which bear upon his contempt conviction transcend the particulars of his case. As shown in the above Motion for leave to file this brief *amicus curiae*, far more common than an injunctive suit against a Fields are the proceedings being conducted throughout the South against proponents of equality. See cases cited *supra*, p. 3. The freedom of speech which petitioners invoke in those cases is the same which is at issue here. When Fields breaks the law he should be prosecuted promptly and vigorously. But the great protections of the Constitution which redound to all should not be scrapped in the course of keeping his conduct within lawful bounds.

Respectfully submitted,

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